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Simplified Principles of FIQH

By:
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Translation Edited by:
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(May Allah Protect him)



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Aasaan Usool-e-Fiqh

Simplified Principles of

FIQH

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PREFACE

All praise is due only to Allaah ﷻ. We laud Him and beseech His aid and beg forgiveness only from Him and believe in Him and rely solely on Him. We seek salvation in Him from the evils of our inner selves and the vices of our actions. There is none to misguide one whom Allaah ﷻ intends to guide. I bear witness that there is no one worthy of worship but Allaah ﷻ, the One who has no partner. I also testify that Hadhrat Muhammad ﷺ is the faithful servant and the Last Rasul of Allaah ﷻ. May Allaah ﷻ mercy be on him, his family and his Sahabaah ؓ and may He bless them and raise their status.

The Lofty Quraan is the divinely protected revelation of Allaah ﷻ whilst the Sunnat are the protected revelation to Rasulullaah ﷺ. Both these are the primary sources of derivation in Shariat, followed by Ijma and Qiyas as secondary sources. These four sources enables a Muslim to be amongst the Ahle Sunnah Wal Jama'ah. Obviously the Sunnan comprises of the Ahadeeth and the way of life of the Beloved Nabi ﷺ. It also includes the Sunnat of the Sahaba ؓ and the validated activities of the Tabe'een and Tabe- Tabe'een who had the qualities of Ihsaan.

However, it is well known that letters make up words, words are used to construct sentences. The science of principles of Fiqh (jurisprudence) entails details to the minutest specification the classification of letters, words and sentences.

The work in your hands is not for cursory reading but study, teaching and learning. It will Insha Allaah ﷻ become a standard text book for those who desire to understand Deen.

We make Duaa that Allaah ﷻ rewards all those who made possible the release of this important work on Islaam.

A.H.Elias (Mufti)
1426 / 2006

FOREWORD

The importance and necessity of Usool-e-Fiqh

For the guidance of mankind, Allaah ﷻ had revealed His Incomparable Speech upon The Chief of all Ambiyaa, Hadhrat Muhammad ﷺ, and we are bound to practise thereupon until The Day of Qiyaamah. The explanation and exegesis of the Qur`aan Majeed was made clear to us via the statements and actions of our Master, Nabi ﷺ. The entire life of our Nabi ﷺ is a living example of the (import of the) Qur`aan Majeed. The collective term for the statements and actions of Nabi ﷺ is 'Hadith' or 'Sunnat'. The Speech of Allaah ﷻ comprises innumerable (types of) knowledge and content and the speech of Nabi ﷺ is also concise and encompassing.

However many voluntary actions there exist of man, there is some or the other instruction or ruling, existing for those actions from Allaah ﷻ. That is, either the action of man is Halaal, Haraam, Makrooh or permissible. Similarly is Fardh and Waajib. All actions are either worthy of reward or liable for punishment or retribution. The rulings for all these are present in the Speech of Allaah ﷻ or in the Ahaadith of Nabi ﷺ. However, we are only able to decipher or

understand what Aayat or Hadith applies to which action, if we have a proper and in-depth knowledge of Usool-e-Fiqh (the Principles of Jurisprudence).

One should understand that Usool-e-Fiqh is in reality the Usool of Deen. The foundations of the proper Deen lies in this knowledge (and the understanding of it).

The Definition of Usool-e-Fiqh

The knowledge of Usool-e-Fiqh lies in knowing those rules whereby the detailed proofs of every action of a *Mukallif* can be found in the Laws of the Shariah. (A *Mukallif* is that person upon whom the Laws and duties of the Shariah are binding).

Example

With regard to the five daily Salaat, Allaah ﷻ states in the Qur`aan Majeed: **'Aqeemus Salaah'** ('Establish Salaat'). One will only understand the import of this statement and realise its Shar'i legality when one knows that the word ***'Aqeemu'*** is an *Amr* (command) in Arabic grammar. And then one has to know what Shar'i ruling exists with regard to a command. In the (understanding of) Usool-e-Fiqh, the letters which comprise the Aayaat and Ahaadith are subject to such scrutiny, where their reality and conditions come under the spotlight. The result of this is that Shar'i rulings and Ahkaam are extracted by the in-depth study and understanding of the Qur`aan Majeed and Ahaadith.

Subject Matter

The subject matter of every type of knowledge is the discussion of the conditions of the constituents which exist in that knowledge. So for example, in the study of medicine, the subject matter would be the body (of man and animal), because the conditions of the body are discussed and analysed in the study of medicine.

Therefore, the subject matter in Usool-e-Fiqh is the Speech of Allaah ﷻ (Qur`aan Majeed), the speech of Nabi ﷺ and the rulings of the Shariah. The conditions and realities of these are discussed in the knowledge of Usool-e-Fiqh.

Objective and Aim

To know the detailed proofs for the rulings of the Shariah, whereby a deeper insight and certainty is achieved. Success in both the worlds is also acquired by the study of this knowledge (and all subjects of Deen).

Usool-e-Shar'i (The Principles of the Shariah)

The proofs of the Shariah are four: Kitaabullah (those Aayaat which pertain to various rulings), Sunnat-e-Rasool ﷺ, Ijmaa-e-Ummat and Qiyaas. First and foremost, let us discuss Kitaabullah.

PART ONE: Discussion on Kitaabullah

Chapter one

With regard to the proofs of the Shariah, the first stage is Kitaabullah.

Definition

Kitaabullah is the Qur`aan Majeed, which was revealed to The Chief of all the Ambiyaa, Muhammad Rasulullaah ﷺ. This was done through the medium of Hadhrat Jibraeel (alaihi salaam). This has reached us directly, without any doubt, by *tawaatur,* through the pure tongue of Rasulullaah ﷺ.

Tawaatur

The meaning of *tawaatur* is that, in the chain of narrators of the Qur`aan Majeed, right from the era of Rasulullaah ﷺ until this day, there are so many, that there is complete unanimity on the chain of narrations. It is also impossible to lay any claim of falsehood on them all. This is that Qur`aan Majeed which exists in the *Masaahif* (Divine Scriptures).

If there exists such an Aayat whose ruling is abrogated, but it exists in the Scripture, then this Aayat is (part of the) Qur`aan Majeed. For example, *"And those of you who die and leave behind wives should bequeath for their wives a year's maintenance and residence without turning them out..."* (Surah Baqarah, Aayat 241)

If, on the other hand, an Aayat upon which a ruling is placed and is practiced upon, but it is not mentioned in the Scripture, then such an

Aayat is not (regarded as) Qur`aan Majeed. For example, if a married man and woman fornicate, then they are to be stoned to death. However, this (ruling) is not mentioned in the Scripture.

If in an Aayat which is *Mutawaatir,* there exists some additions or changes, which are not transmitted by *tawaatur* (continuous unbroken chain of narrators), but these (changes/additions) exist only in some narrations, then such changes and additions are not Qur`aan Majeed.

Such narrations have been transmitted by Hadhrat Ubai Bin Ka'ab and Abdullah ibn Mas'ood رضي الله عنهما.

SECTION 1: *The distribution of Letters*

The Qur`aan Majeed is in reality the combination of letters and meanings. The mere recitation of the meanings of the Qur`aan Majeed does not warrant any reward, nor will Salaat be valid. In reality, the meanings of the Qur`aan Majeed are understood through (the medium of) the words/letters.

The connection of the letters to the meanings are done through various ways. It is said that the letters are placed there for the meanings. It is these very letters which are used to understand the meanings. The letters demonstrate the meanings with clarity, etc. It is for this reason that the letters are connected to the meanings, which give rise to the letters being classified into various categories. These categories are further sub-divided, and each one of these are titled. Therefore, the letters of the Qur`aan Majeed are also given various different tiles/names.

THE TYPES OF LETTERS

Letters are firstly divided into four types:

1. **The first type:** Those letters (which) are used for a specific (definitive) meaning. This refers to such letters which are used for a specific meaning. The connection between the letter and the meaning is so close that whenever the letter is mentioned the (specific intended) meaning is immediately understood. For example, the word Zaid, which is used to denote a specific person, so when the name Zaid is used immediately that person comes to mind.
2. **The second type:** Those letters where their meanings are clear *(Zaahir)* or hidden *(Makhfi).*
3. **The third type:** A word is used to denote some or the other meaning.
4. **The fourth type:** The word is used to establish a specific ruling.

CHAPTER TWO: First type:

The first type of words are those for whom a specific meaning applies. This is done is various ways. Hence this first type is divided into four: ***Khaas, Aam, Mushtarak*** and ***Muawwal.***

1. ***Khaas:*** If a word is used to denote one specific meaning then it is called *Khaas.* Either it denotes one being, like Zaid, which is used to denote one single person; or it denotes one class, like men, women or horses; or one species, like humans or animals.

Benefit

In Usool-e-Fiqh, words which are used to specify a particular species are termed, *Nou'*. For example, man is one *Nou'*. Man (male) is such (a species) that he can become a ruler, and only man has the right to Nubuwwat, Imaamat and being a witness to (cases involving) *Hadd* and *Qisaas.* Women (female) is another type of *Nou'.* She is to be a subject (ruled). This is so because she bears the children and is responsible for household duties. The objective (duties and responsibilities) of both (man and woman) are different.

Horses are also one *Nou',* regardless of male and female, because the objectives (uses) of both are the same, i.e. to draw carts, etc. Those words which are used to denote such individuals whose objectives differ are termed *Jins.* For example, the word *Insaan* (mankind) include both, men and women, and the term *Hayawaan* (animals) includes *Insaan,* horses, cattle, etc.

The summary is that the *Khaas* word is not used to denote an individual, rather it is used to denote generality. For example, the sentence: "*Insaan* came" would denote the arrival of a *Hayawaan Naatiq* (such an animal that speaks). Whether one person came or fifty persons came, this same sentence would hold true in both cases. Similarly, the sentence, "*Hayawaan* came", would hold true for the arrival of one goat, ten cattle or five people. In the same way, the sentence, "man came", can be used for the arrival of one man or many men. The reason for this is that *Khaas* does not refer to any one particular individual. Even if fifty men arrived, this sentence would be

correct, because each one of those men falls under the description of being a man.

Mas'alah: If a particular word is used to denote a plurality of something, but at the same time this amount is limited/restricted, then also such a word would fall under the category of *Khaas.* For example, numbers like two, three, hundred, etc. The reason being that these words represent a certain amount.

TYPES OF KHAAS

Khaasul Fard: This is that singular word which denotes one single being, for example, *Zaid (name of a particular person).* This is called *Khaasul Fard.*

Khaasun Nou': This is that singular word which is used to denote a plurality of individuals, like 'man'.

Khaasul Jins: This is that singular word which is used to denote a species, like mankind, animals, etc.

2. ***AAM:*** *Aam* is such a word which is used once, to denote a multitude of the same species, whose quantity is unlimited/unspecified. For example, "the men", "the Muslims", etc. In *Aam,* the individuals are the objectives (under discussion/scrutiny). If any ruling pertains to: "the men" or "the Muslims", then it applies to every individual man or Muslim.

If a word is singular in form, but it denotes plurality, then too, it is categorised as *Aam.* For example, the words, *'man'* (which refers to any intelligent being), *'maa'* (which refers to unintelligent objects),

'Al-Qowm' (nation), *'Raht'* (group), etc.

3. ***MUSHTARAK:*** This is where one word was, from the initial stages, used to specify and indicate various different connotations. For example, the word, *'ain* (عين*),* is used to mean sun, knee, gold, spring (of water), eye, etc. However, all the designated meanings do not refer to one and the same thing, they have different connotations. This is why its use will be in accordance to its specified context.

Note: The word *'Salaat',* means dua and namaaz, however, this word is not Mushtarak, because in the first instance this word was only meant to denote dua, but many generations later its connotation changed to mean Salaat.

4. ***Muawwal:*** When in any context amongst the many possible Mushtarak words, one single connotation is taken with proof.

In this case the word which is taken for its specified meaning is called ***Mushtarak Muawwal.*** This is now known as ***Muawwal.*** For example the meaning of the word *Qar'a (*قرأ*),* is both, *haidh* and *tuhur.* This is *Mushtarak.* In the Aayat (ثَلَاثَةَ قُرُوءٍ), when a Mujtahid had come to the conclusion that the word *Quru* means *haidh,* and he had established that the word does in fact refer to *haidh,* then after the interpretation, this word is called *Muawwal.*

Second part: The discussion on the ruling of *Khaas*

The effect of *a* ***Khaas*** word is that it indicates to the *madlool* (specified meaning) without probabilities, as long as no other proof is presented that indicates another possible meaning. **Therefore the ruling of *Khaas***

is this that practice upon it is compulsory. It is also compulsory to accept it and the rejector thereof is branded a kaafir.

If there is any likelihood or impediment which gives rise **to another meaning in *Khaas*** then it will be **compulsory to practice thereupon.** But it will not be compulsory to accept (believe in) this meaning. **The rejector** (of this other possible meaning) will be branded a faasiq and **not a kaafir.** An example of the compulsion on *a Khaas* word.

Example

The word *'Thalaathah'* in the Aayat:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

"A divorced woman will be held for three haidh", i.e. The *iddat* period of a divorced woman is three periods of *haidh.* In this aayat, the word *Thalatha* is *Khaas.* Its connotation is evidently clear. Three means three, and nothing more or less. That is why there is consensus that practice will be made on three and belief in this is essential. The word (قُرُوءٍ) is *mushtarak.* It could either mean *haidh* or *tuhur* (paak period – i.e. the clean period between 2 menstrual cycles). Hadhrat Imaam Shaafi (rahmatullah alayh) had taken the meaning to be *tuhur* and thus made the word *muawwal* thereupon, whereas Imaam Abu Hanifah (rahmatullah alayh) had opted for the word *haidh,* and has concluded that the period of *Iddat* for a divorced woman is three *haidh.* In the opinion of Imaam Saheb (rahmatullah alayh), since the word *thalaatha* which appears in the aayat is *Khaas;* hence complete and total practice on this word can only be made if the word *Quru* is taken to mean *haidh.* If the word is taken to mean *tuhur* (as Imaam

Shaafi had taken it to mean) then in practice, *iddat* would be either more or less than three, because talaaq should not be given to a woman who is in *haidh* (according to the Hadith).

Talaaq is to be given during a woman's paak period, so if a woman is given talaaq, then some part of that *tuhur* has already passed, hence (if the count of three *tuhurs* starts from then), then it will be less than (full) three. If that particular *tuhur* wherein the talaaq was given is not counted, then in reality more than three is being practiced upon. This is contrary to the objective of *khaas,* because the practice on the actual word ('three' in this case) is being left out.

However, if the word *Quru* is taken to mean *haidh,* then since talaaq will be given in *tuhur,* then the *iddat* will commence on the following *haidh.* This will result in practice being made upon full three *(haidh).* The crux of the matter, is that total and complete practice be made upon the *madlool.*

The establishment of Shariah laws by the *Khaas* word

The words of *khaas* are of different types, which are borne out by their various definitions and examples. Most Shar'i rulings which are established by *khaas* are done so by the scales of *Amr* (order) and *Nahy* (prohibitions). This is why these two are discussed in some detail. Shamsul Aimmah Sarakhsi (rahmatullah alayh) states: *"In the discussion of Usool-e-Fiqh, Amr and Nahy have the most right to be first, because their being at the beginning have great significance, and the recognition and compulsion of rulings relating to Halaal, haraam and other Waajib issues are dependant thereupon."*

CHAPTER THREE: THE DISCUSSION ON AMR

The word on the scale of *Amr* is ***khaas.*** The servants (of Allaahﷻ) have been made *mukallaf* (entrusted with Shar`i responsibilities and commandments), because of this *Amr.* Similar is the case with *Nahy.* The meaning of the scale of *Amr* being *khaas* is this, the scale denotes one particular meaning, i.e. to seek *(talab).*

The literal meaning of *talab* is to intend a certain thing or make apparent a desire, whether this is effected through the use of speech or gesture. However a general *talab* is not necessarily a Shar`i *Amr.* In the Shariah *talab* has a specific connotation.

Definition

When a speaker who is high ranking makes *a talab* (seeks/commands something) from another (junior/underling) then this is (defined as) *Amr.* For example, افعل(Do!)

If an instruction is issued to a contemporary (one of equal rank) then this is known as ***Iltimaas.*** If a request is made of someone who is higher in rank then this is an appeal or dua.

When Allaahﷻ, Who is *Ahkamul Haakimeen* (The Grand Instructor), gives an instruction or seeks something (from His servants) then the completion and fulfilment thereof is, by way of logic and Shariah, necessary (Waajib). Regardless of whether this instruction is issued via the medium of the Qur`aan Majeed or Hadith Shareef (Hadithe-Qudsi).

Allaahﷻ instructed all the Angels thus: اسجدو لآدم ("Prostrate to

Aadam ”). Shaitaan was also addressed in this instruction, however he refused to heed and thus became the rejected one. Allaah ﷻ thus asked him *“What prevented you (from prostrating) when I instructed you?”* This sentence indicates that an *Amr* from Allaah ﷻ or His Rasool ﷺ necessitates practice thereupon.

The demand of *Amr*

It is clear that an ***Amr*** is used to make binding a **ruling.** This necessitates and demands ***Wujoob*** (compulsion).

If there is any prevention or other factor whereby the enacting of the Amr will be rendered difficult then taking into consideration the time, place and context this other meaning will be accepted.

THE MEANINGS OF *AMR*

The scale of *Amr* is used in 16 different meanings contexts:

Ijaab – (to make incumbent) when the command is spoken/given, then the mind immediately goes towards the compulsion. For example, with the Qur`aanic injunction of *“Establish Salaat”* the compulsion of Salaat is recognized.

Nudab – (to become optional) reward in the Aakhirat (hereafter). For example, the Aayat, *“Make your slaves Mukaatib* (one of the ways of setting slaves free), *if you discern goodness in them.”* From other indications, we know that to set every good slave free is not a compulsion, hence this instruction is for *istih-baab* (optional/worthy of reward).

Ibaahat – (permitted) after the removal of an ‘obstruction’ to be

given consent for something. For example, Allaah ﷻ says in the Qur`aan Majeed, *"When you have become Halaal* (removed your Ihraam) *then (you may) hunt."* Hunting is prohibited in the state of *Ihraam,* hence when it is removed then one may hunt. This naturally does not mean that every person who removes his/her *Ihraam* must go and hunt.

Tadeeb – (to teach someone culture/etiquette) in order to instil good character. For example, Nabi ﷺ said, *"Eat from that which is nearest to you."*

Irshaad – for a better understanding and perception of worldly matters. For example Allaah ﷻ advises the following with regard to monetary dealings, *"And seek the testification of two male witnesses."* This is not an incumbent instruction.

Tahdeed – To censure/warn someone, by demonstrating anger. For example, *"Do as you please!"* ... and then you will see what happens!

Inzaar – to threateningly convey a message. For example, *"Say (to the kuffaar, O Muhammad ﷺ)! Reap benefit (enjoy yourself) with your kufr, for a little while."*

Ta`jeez – to show helplessness, i.e. to demonstrate to the addressed one how weak and helpless he/she is. For example, when Allaah ﷻ challenges the kuffaar to *"Bring a Surah the like thereof".*

Taskheer – to show that something is in (Allaah's ﷻ complete) control. For something to be brought into quick existence and for something to be immediately effected following the Command of Allaah ﷻ. When Allaah ﷻ intends anything, then it occurs instantaneously, without

any delay whatsoever. When Allaah ﷻ addressed the jews saying, *"Become apes, despised",* then they were immediately transformed. This power and ability to transform is not in the hands/control of man.

Takween – to bring into existence. In order to bring anything into existence, Allaah ﷻ says, *"Be! And it is".*

Itnaan – to show favour. Demonstration of a favour or benefaction. Allaah ﷻ says, *"Eat for that which Allaah ﷻ had provided you with."* He is the Only True Benefactor. Everything we have is bestowed by Him.

Ikraam – To bestow respect/honour. Allaah ﷻ says, *"Enter it (Jannat) with peace and contentment."* A guest is granted honour by being addressed with, *"Enter".*

Ihaanat – to disgrace. Allaah ﷻ says, *"Taste (of the punishment)! Indeed you are the respected and honoured."*

Tasweya – to equate two things. As Allaah ﷻ says, *"Adopt patience or don't have patience",* (it is all the same, neither will save you from punishment).

Ihtiqaar – To belittle or degrade. As Hadhrat Moosa (alaihi salaam) said to the sorcerers, *"Caste, that which you (usually) caste!" (i.e.* your magic has no rank by me).

Dua – a request. *"O Allaah! ﷻ Forgive me."*

Tamanni – to make apparent a desire. As the inmates of Jahannum will desire and say to the Keeper of Jahannum, *"O Maalik! If only your Rabb would fulfil our desire (of death)."*

Warning: *Amr* sometimes comes as *a Khabar* (informative sentence), which necessitates even more incumbency. That is, it is a sentence which gives some information, which in actual fact seeks to make incumbent some duty. The non-fulfilment of such an instruction is tantamount to disobedience. **The fulfilment of such an *Amr* is more binding.** For example, if a person says of his close friend in a gathering, *"Today he will recite Qiraat."* In this instance it will be incumbent for this person to recite the Qiraat, because if he does not do so, **then it will be tantamount to disobedience.**

An example of this in the Speech of Allaahﷻ, *"And mothers will breastfeed their children for full two years."* This indicates that women should breastfeed their children. If any woman, without a valid Shar`i reason, does not breastfeed her child, then she will be deemed as being disobedient to Allaahﷻ.

The condition of the ruling of *Amr*

The ruling of an *Amr* is compulsion. That is, for an injunction to become binding upon the servant (of Allaahﷻ). When any act becomes binding upon the servant owing to an *Amr,* then it will be necessary to know whether this fulfilment is achieved by carrying out the injunction just once or by continual practice. Similarly, it will be necessary to know whether the *Amr* necessitates immediate fulfilment or delayed.

There is no need for repetition of fulfilling an *Amr*

The object of an *Amr* is not for repetitive fulfilment. If the desired act is carried out once, then the compulsion of the *Amr* will have been

deemed fulfilled. If, for example, someone asks you for a glass of water, then if you bring the water once, the instruction will be deemed fulfilled. If you do not bring water for a second time, then you will not be liable for censure, unless there was no following instruction. For example, implementation of the Aayat, *"Establish Salaat and pay Zakaat"* will be deemed fulfilled with the performance of one Salaat in its respective time and the payment of Zakaat once annually.

Warning: One should never have this notion that since the Aayat for establishing Salaat and paying Zakaat comes a few times in the Qur`aan Majeed, so if one performs a few Salaat (in one's lifetime) or pays Zakaat a few times (in a lifetime), then the command is fulfilled. One should never think that this does not necessitate five times daily Salaat or annual payment of Zakaat.

One should be aware that for the repetition of an act (in fulfilment of an *Amr)* in not achieved because of a single scale of *Amr.* This (repetition) is denoted by some other factor.

Allahﷻ has connected these Ibaadaat through some other factor in such a way that when these factors come into existence to necessitates the coming into existence of these Ibaadaat. For example Allahﷻ says, *"Indeed Salaat is obligatory upon the believers at the appointed time(s)."* That is, the five times in which to perform Salaat are specified, when these times come into existence then the Salaats become obligatory upon the believers.

Hence, the Aayat, *"Establish Salaat"* makes incumbent the performance of Salaat, however the details of how many and when to

read, are not mentioned here. In another Aayat it is mentioned that when **a specific time** enters then Salaat should be performed, and it should be read daily whenever these times occur. In effect, the instruction of *"Establish Salaat"* is applied whenever these specific times enter. This is the reason why the Salaat performed out of its specific time is not accepted, and during one time many Salaats are not valid. It is as though the instruction for Salaat comes repeatedly.

Similarly it is mentioned, *"Give Zakaat"* **but the amount and time are not** specified. These are established from the Hadith Shareef. It is established from the Hadith that the owner of *Nisaab* has to give 2½ % of his wealth in Zakaat annually.

It is stated in the Qur`aan Majeed that a person must make Hajj of *Baytullah.* This makes Hajj incumbent on the believers (those who can afford it) once in a lifetime. **There is no need to perform Hajj repeatedly because the connection of Hajj was made to *Baytullah,* and there is only one *Baytullah.* Therefore only one Hajj is Fardh.**

There is no possibility of *Amr* being repeated

There is no need for *Amr* of one action to be repeated time and again, similarly there is no possibility of the scale of *Amr* to denote repetition. This is the reason why when an instruction is issued it will be incorrect to intend the action to be repeated. There is no acquiescence for an action to be repeated following one *Amr.* A Shar`i example of this is as follows:

A husband placed on his wife the choice of talaaq with one *Amr,* by saying *"Give Talaaq to yourself."* Therefore just as the wife was given

the choice of one talaaq, if she exercises this right then only one talaaq will take effect. She does not have the option of two. Similarly if the husband by this scale of *Amr* intends more than one talaaq then this intention will be incorrect **because the scale of *Amr* only holds the possibility of one instruction.**

Note: The Fuqaha have written that if a husband intends three talaaqs by his sentence *"Divorce yourself"* then following this *Amr* the wife may cast on herself three talaaqs. The husband's intention in this case is effective and the wife may give herself three talaaqs.

On the face of it, it appears that this *mas'alah* contradicts the general rule (laid down earlier), but that is not the case. It was established (from the discussion above) that the wife gets the choice of talaaq once, so if three is intended in this one choice, and she exercises this right, i.e. three talaaqs at once, then it will take effect. However, if the wife gives herself three separate talaaqs, by saying, *"I give myself one talaaq"*, and then she says the same sentence two more times, then in this case only one talaaq will be effective and not three.

There remains now the question of whether the intention of two talaaqs will be correct or not. The Fuqahaa have written that for a man to make the intention of two talaaqs with the sentence, *"Divorce yourself"* is incorrect and it would be likewise for the wife to effect upon herself two talaaqs.

The difference between two and three talaaqs is due to another factor, and the scale of *Amr* does not have much effect in it. The reason is that in the (Arabic) sentence, *"Talaaq yourself"*, the word طلقي indicates to

one *masdar* (root-word) wherefrom the scale of *Amr* originates. The actual import of the word طلقي is ايقاع طلاق اطلُبُ منك or طلّق طلاقا *("I seek from you the giving of talaaq").* This, in effect denotes one *masdar nakira* (common noun root-word), which indicates a single thing and not a combination. It denotes one and not many. *A masdar nakira* consists of parts but is not the combinations of many individuals. For example, the word; 'standing'. It will be correct to state, 'a short stand' or a 'long stand', but not 'one stand' or 'two stand', etc. Yes, it will also be correct to say,' ½ standing' or 'fully standing'.

Similar is the example of the words, 'water' and 'honey', which are both individual words. It would not be correct to say, 'one water', 'two water', 'one honey', 'two honey', etc, but it would be correct to say 'little honey', 'plenty honey', '½ honey' or 'full honey'. One drop of water would be called water and an ocean of water would also be called water. From this we understand that individual things can be subdivided but they cannot be counted. In other words, a whole is made up of fractions (can be subdivided) but it is only one and not more than one.

When an individual thing is mentioned then the entire subject is meant. For example, when 'water' is mentioned then the water of the entire world is taken into consideration. If a little water is meant, then we will say that this is a lesser part of the whole.

In this way, the word 'talaaq' is *a mufrad* (individual). It can be subdivided into a partial (lesser) or whole. The lesser portion of talaaq is one talaaq and the whole of it is three talaaqs. There cannot be more

than three talaaqs, so three constitutes the whole of talaaq, but two is not deemed a lesser part of (this) whole, because two talaaqs is neither a lesser nor the whole of talaaq.

If the wife is a slave-woman, then in her case a whole talaaq would constitute two talaaqs, **because the maximum talaaqs for a slave-woman is two and not three.** So in the case of a slave-woman if the husband intends one or two talaaqs with the single scale of *Amr,* **طلقي,** *then* his intention would be correct. And this wife can effect upon herself one or two talaaqs, at one go.

The condition regarding the compliance to *Amr*

Whether it is necessary to immediately comply with an *Amr* or to delay, depends on the contextual factors accompanying it. This is the reason why the scale of *Amr* only indicates to the desired action. The factors of whether it is immediate or postponed, are excluded from the connotation of this scale. For example if it is asked, *"Bring water",* then in accordance to the generally accepted trend, immediate compliance is intended. On the other hand if it is said, *"You cook the food for the invitation",* then the person being addressed knows that tomorrow is meant, because that is when food is to be cooked.

Note: This discussion evolves around the actual and foundational rulings of the Shariah. There are various *Fiqhi* proofs for the specified and unspecified acts of Ibaadaat. Amongst the acts of Ibaadaat which are commanded, there are some whose compliance is immediate and others postponed.

Unspecified (insofar as time) acts of Ibaadaat

These are those acts of Ibaadaat which are commanded in a general unspecified form, and no particular time is stated for their compliance. There is consent to delay the compliance of such acts of Ibaadat, after they have been ordained, however, it is *Mustahab* (preferable) to comply to the *Amr* immediately. This earns greater reward.

Imaam Karkhi (rahmatullah alayh) states that with regard to the *Amr* in matters of Ibaadaat, the precautionary step is to comply immediately, and not to delay unnecessarily. Specifically, Zakaat should be discharged timeously. The scale of *Amr* does not necessitate immediate compliance to discharge Zakaat, but Zakaat is for the ameliorating of the needs of the poor and needy, and this needs to be effected immediately. This is the reason why it is sinful to delay the discharging of Zakaat without valid cause. The Faqeeh Abu Ja`far (rahmatullah alayh) reports from Imaam Abu Hanifah (rahmatullah alayh) that it is *Makrooh Tahrimi* to delay the 20 discharging of Zakaat. There is also emphasis on this reported from the Saahihain (rahmatullah alayhima). Amongst the Ibaadaat whose compliance is unspecified are; Zakaat, Sadaqah-e-Fitr, Kaffarah of fasting, the Qadha of Ramadhaan fasts and those Ibaadaat made in *Nazar* (vow), whose time of performance are unspecified for example when a person makes the following vow, *"For Allaah*ﷻ*, upon me is a fast."*

The ruling regarding the Ibaadaat whose time of compliance is unspecified

These Ibaadaat, regardless of how long they are delayed, their performance will remaining binding and upon completion will be effected. There is no Qadha for them.

The specification of intention for these acts of Ibaadaat are necessary. For example, when giving Zakaat a person must say, *"I am paying Zakaat",* or when keeping Qadha fasts he must specify, *"I am keeping Qadha fasts of so and so day of Ramadhaan",* etc. The intention for these acts of Ibaadaat are necessary to be made before carrying them out. If ***after*** giving goods or money to the poor and needy, one makes the intention that it was Zakaat, then the Zakaat will ***not*** be fulfilled. Such an intention (which is delayed) is no valid. It is necessary to make the intention for Qadha fasts of Ramadhaan before Subh Saadiq (true dawn). If one did not make the intention before Subh Saadiq or if the intention made was a general one and not one specifying Qadha of Ramadhaan fasts, then such a fast will not be valid as a Qadha of Ramadhaan.

Specified acts of Ibaadaat

These include those acts of Ibaadaat whose time of performance is specified and limited. There are four types of such Ibaadaat.

First type – These are those acts of Ibaadaat whose time of compliance remains even after their performance (during the specified time). That is, it is not necessary to utilise and encompass the entire

specified time with that Ibaadat. In fact, the completion of that Ibaadat only takes up a portion of the entire specified time. For example, the five times daily Salaat. It is not necessary to remain performing the Fardh Salaat to fill up the entire specified time.

The time for these acts of Ibaadat, have *zarf, sabab* and *shart.* The meaning of having ***zarf*** is that the Ibaadat of Salaat must be performed within the **specified time frame.** The meaning of *shart* is that the act of Salaat will **not be valid if performed before the specified time.** This is why before the ***shart*** (condition) comes into being, there will be no significance of the *mashroot* (conditional thing).

The meaning of ***sabab*** is that the Salaat becomes *Waajib* (compulsory) upon the **entry of the specified time.** The performance of the Salaat before the entry of its specified time, is not *Waajib.*

If a person passes away before the time for a Salaat enters, then he will not be liable for that Salaat. If a person passes away after the time for a Salaat enters, then too, he will not be held liable for not having performed that Salaat, because the compulsion for having to perform that Salaat lasts until the end of that specified time. So, in effect, he had not defaulted on that Salaat, because at the time of his demise, there was still time remaining for that Salaat.

Second type – This refers to those Ibaadaat whose duration of execution encompasses the entire specified time period, where no time is left out. This time frame is the *shart, sabab* and *me'yaar* (criterion). It is the ***sabab*** in this way that every portion of the specified time constitutes the

sabab for every part of the Ibaadat. For example, the fasts of the month of Ramadhaan. The time (this month) is the *sabab* and *me'yaar* for fasting. The object of it being the ***me'yaar*** is this that two fasts cannot be kept during one time. From the time of Subh Saadiq to sunset, only one fast can be kept, which encompasses this entire time. This month of Ramadhaan has been specified by Allaah ﷻ as the month for fasting. This is the reason why any other fast besides the fast of Ramadhaan is not valid during this month. There is also no need to make the intention for fasting before Subh Saadiq. The intention made just before mid-day suffices. In fact, even if a person, during the month of Ramdhaan, makes an intention of a general fast or any other Waajib fast, like *nazar* (vow) fats, then too, that fast will be counted as a fast of Ramadhaan (and not the other fast which was intended). However, if no intention for fasting was made and the person stayed hungry until sunset, then the fast will not be valid. There is a condition of at least being an intention of even a general fast.

Third type – Those Ibaadaat whose time-frame is *a* ***me'yaar*** and **not a *sabab.*** For example, to take a vow to keep a fast on a particular day. To stipulate a particular day for *a (nazar)* fast, makes that day specific, and it becomes Waajib to fast on that day. The specific day will be come the *me'yaar* (criterion) for fasting but not the *sabab* (reason for fasting). The *sabab* for a fast of a vow is the vow itself. The mere sentence, *"For Allah Ta'ala, upon me is the fast of Jumuah".*

Ruling: The ruling for this Ibaadat is that it is not necessary to make

an intention before Subh Saadiq, it will be sufficient to make the intention before midday. This fast will also be fulfilled with a general intention. Even an intention for *nafl* will suffice. If the person did not make the intention before Subah Saadiq and then before midday made the intention for some other Waajib fast, then the fast will suffice for the *nazar* fast.

Yes, if the person made an intention for some other Waajib fast before Subh Saadiq, then that fast will be counted for the intended and the *nazar* fast will become Qadha. The difference between the fasts of Ramadhaan and *nazar* is that for Ramadhaan, even if an intention is made before Subh Saadiq for some other Waajib fast, then too the fast will be counted as a Ramadhaan fast, whereas for *a nazar* fast, if some other fast is intended, then the intended fast will be fulfilled and not the *nazar.*

Fourth type – Those Ibaadaat whose time is to one extent like *a* ***me'yaar*** and to another extent ***zarf.*** For example, Hajj. The time for Hajj is Shawwaal, Zul Qada and the first ten days of Zul Hijjah. In this respect, two Hajj cannot be performed during these months in a single year. Also, the rites of Hajj do not encompass the entire time-frame. The rites of Hajj are carried out during the 'five days of Hajj'). Sheikhain have mentioned that it is best to perform Hajj during the year when it becomes Fardh upon a person. It is sinful to delay, without valid reason.

Ruling: The ruling regarding this type of Ibaadat is that whenever it is performed it is deemed fulfilled. There is Qadha for it. A Fardh Hajj

will be accomplished even by the mere intention of a general Hajj, on the condition that Hajj has become Fardh upon that person. **The reason for this is that since the time is *me'yaar* just like Ramadhaan, where a general intention will hold for the Fardh duty.** Another reason is that a believer cannot undergo all the hardships and difficulties (attached to the Hajj journey, etc.) and perform a Nafl Hajj notwithstanding Hajj being Fardh on him. The reward for a Fardh Hajj is greater than that for any other Hajj and to abandon the Fardh Hajj warrants great punishment, hence even the intention for a general Hajj will count for the Fardh Hajj.

However, notwithstanding Hajj being Fardh on a person, if he consciously makes the intention for a Nafl Hajj, then his Hajj will be regarded as Nafl. The Fardh will not be fulfilled. Since the time for Hajj is also *a zarf,* hence an intention for Nafl would be valid. Just like how during the time for a Fardh Salaat, the intention and performance of Nafl Salaats would be valid.

CHAPTER FOUR: The Ruling Regarding the *Ma'moor Behe* (act which is ordered)

The *Ma'moor behe* can be implemented in two ways – *Ada* (immediate) and *Qadha* (postponed).

The meaning of ***Ada*** is that the actual thing which is being ordered is expected to be fulfilled. For example, Salaat, which has to be performed in its actual specified time.

The meaning of ***Qadha*** is to fulfil with a replacement of the actual

ordered thing. The servant (of Allaah ﷻ), could not fulfil the actual ordered instructions, hence as a recompense he fulfils it with a replacement. For example if a person could not perform a Fardh Salaat on its specified time, and hence has to make up for it. The replacement/delayed Salaat, at the time when it is performed, is not, in the Sight of Allaah ﷻ, the Fardh time for that Salaat. Therefore, the servant is performing such a Salaat, which is not obligatory to be performed at that time. Since it is not anymore possible to perform the specific Fardh Salaat (which he had missed), hence he is performing a proxy Salaat, which is called *Qadha.* **To make *Qadha* is Fardh.** The Zuhr Salaat of today cannot be a substitute for the Zuhr Salaat of yesterday. The reason being that the Fardh of Zuhr for the time of Zuhr applies to today's Zuhr. The substitute of yesterday's Zuhr is being performed by the servant from his side.

Generally (amongst people), *Qadha* is called *Ada* and vice versa. There is no harm in this.

There are two types of *Ada* – *Ada Mahadh* and *Ada Ghair Mahadh. Ada Mahadh* is further subdivided into *Ada Kaamil* and *Qaasir.*

Ada Kaamil – This is when the ordered act is carried out and complied to, with all its attached conditions and stipulations. An example is the person who performs his Fardh Salaat with Jamaat in the Musjid.

Ada Qaasir – This is when the ordered act is carried out with deficiencies. For example, the *Masbooq,* the person who performs his

Salaat, without having read it entirely behind an Imaam.

Ada Ghair Mahadh – This is that *Ada* which is similar to *a Qadha.* For example, to perform the latter part of Salaat with deficiencies, like a *Laahiq,* one who starts his Salaat with Jamaat, and then either falls off to sleep during the Salaat and awaken after the Imaam makes salaam, or his wudhu breaks. Then when this person goes and freshens his wudhu and returns to complete his Salaat, which he now has to do alone since the Jamaat is over, then he will complete the Salaat like a normal *Muqtadi (i.e.* without Qiraat). Although his Salaat will be still regarded as *Ada* because he performs it on time and also since he started with the Imaam, he will be regarded as having performed with Jamaat, but it will not be like a pure unblemished performance. That is why this is regarded as being similar to *a Qadha.*

The types of Qadha

Qadha is also of two types –*Qadha Mahadh* and *Qadha Ghair Mahadh.*

Qadha Mahadh – This the 'pure' *Qadha* which has no relation to the *Ada,* neither in the reality or ruling. This is divided into two types:

Qadha BeMithl Ma'qool – To fulfil an act similar to the Waajib *Ada* act, which logically bears a similarity to the Waajib act. For example, a Salaat which is similar to (another) Salaat.

Qadha BeMithl Ghair Ma'qool – to substitute the Waajib act with such a proxy that logically does not bear a resemblance to the Waajib act, but the Shariah had stipulated this as a substitute. For example, the substitute for fasting is *Fidyah* (financial/material recompense).

The reality of fasting is to abstain from eating, whereas *Fidyah* entails feeding the poor. Logically these two acts appears as opposites, however, according to the Shariah they are suitable substitutes.

***Qadha Ghair Mahadh* –** These are those acts which bear some sort of resemblance to the Waajib *Ada* act. It is also called *Qadha Shabeeha Bil Ada.*

***Qadha Shabeeha Bil Ada* –** To compensate for the Waajib act, where the resemblance is to the actual *Ada.*

For example to utter the extra Takbeers of the Eid Salaat in ruku. This is when a person comes late for Eid Salaat and finds the Imaam in ruku. The latecomer will start his Salaat and go into ruku without saying the extra Takbeers in *Qiyaam,* however he will say these extra Takbeers in the ruku.

There is no separate *Qadha* for the Takbeers of Eid, because without the Eid Salaat, they do not hold any substitute for the Takbeers said ***in*** the Salaat. The actual place and time for these Takbeers is in *qiyaam,* but the person missed it there. The ruku is similar to *qiyaam,* because the *musalli's* body is half-way from *qiyaam.* When a person finds the Imaam in ruku it is as though he found him in *qiyaam.* Now, since the Takbeers have been moved from their actual position (which is in *qiyaam),* they will be regarded as *Qadha,* and since ruku is similar to *qiyaam,* the utterance of Takbeers in the ruku will be as *Ada.*

This *Qadha* is further divided into three types, and the *Ada* is also divided into three types, hence there are altogether six types.

Just as there are six types of *Ada* and *Qadah* in Huqooqullaah

(Ibaadaat), so too are there six types in Huqooqul Ibaad (social dealings).

Examples of *Huqooqul I'baad*

Ada Kaamil – To return a snatched or bought item in its original condition.

Ada Qaasir – To return a snatched or bought item with defects.

If a person snatched another's slave and after this slave came into the possession of the snatcher, he was either accused of some crime or the other, which caused a decrease in his value. Or if someone snatched a goat and subsequently the goat became ill or its horns broke, which devalued it. The returning of this slave or goat will be regarded as *Ada Qaasir.*

Ada Shabeeha Bil Qadha – A person married a woman stipulating the slave of someone else's as the *mehr* (dowry). For example, a person, pointing to a slave, says to a woman, *"In exchange for this slave (as mehr) I take you into my Nikah",* but that slave does not at that time belong to him. However, after the Nikah he purchases the slave from the owner and hands it to his wife as dowry, because that is what he said he would give. He is giving the very slave upon which the transaction (of nikah) took place, and it is necessary for the wife to accept. However, at the time of the transaction this slave belonged to someone else, and it only came into the husband's possession after the purchase. Thereafter the slave came into the wife's possession after her husband handed it over to her. Therefore, in reality, as far as the state (ownership in this case) of the slave is concerned, this is not the same

which was indicated to at the time of the transaction (of Nikah). At that time the slave was somebody else's and it only became the husband's after he bought it. **The change of ownership brings about a change in the quality of actual thing.** It is as though the thing has changed. It is stated in the Hadith Shareef, *"Anas (radhiallahu anhu) reports that some meat was brought to Nabi ﷺ. He ﷺ asked, 'What (From where) is this?' It was said to him, 'It is from something (meat) which was given as Sadaqah to **Bareerah.'** He (sallallahu alaihi wasallam) said, **'It is for her Sadaqah and for us Hadiyah (gift).'"*** From this we realise that change of ownership brings about a change in the reality (quality) of a thing.

By the husband giving this slave it is regarded as *Qadha,* in view of the fact that its quality changed. But since it is the very same slave which he initially indicated to, it will be regarded as *Ada.* This is called *Ada Shabeeha Bil Qadha.*

Qadha Be Mithl Ma'qool Kaamil – Someone's property was snatched and destroyed. Thereafter it was replaced with a similar thing. For example, a person's watch was snatched and destroyed. It was later replaced with a similar watch. This is *Qadha Kaamil.*

Qadha Be Mithl Ma'qool Qaasir – This refers to such a thing which does not have a similar replacement. For example, a goat was snatched and destroyed. Another goat cannot be a replacement, because no one goat can be same to another in all respects. In such a case it will be recompensed in value, i.e. cash money will be given as a return. This is *Qadha Be Mithl Ma'qool Qaasir.*

Qadha Be Mithl Ghair Ma'qool – For example to mistakenly kill a human being, or break his hand, foot, etc. In this case *Diyat* (blood-money) becomes necessary. There can be no (logical) compensation of a loss of human life or limb by money. The two are not the same. Humans are the owners of wealth and wealth is owned. However, since a loss of life or limb cannot be left to go unpunished, hence Allaah ﷻ has devised this compensation. This is *Qadha Be Mithl Ghair Ma'qool.*

Qadha Shabeeha Bil Ada – For a man to stipulate an unspecified slave as a dowry for his Nikah to a woman, which is permissible. In this case he has to give a medium-valued slave as *mehr.* When it is given, then his debt will be fulfilled *(Ada).* If he gives the value of a medium-valued slave, then this will be regarded as *Qadha,* because to give an actual slave is not binding, in fact, a proxy is compulsory. This is similar to giving an *Ada.*

Note: According to most *Usooliyeen,* the same *sabab (Amr)* which establishes *Ada* will necessitate the *Qadha* as well. There is no need for any new or different *nass* (Qur`aanic or Hadith text) to necessitate *Qadha* (when *Ada* is not complied with). The Aayat *"Establish Salaat"* is sufficient for *Qadha* Salaat and likewise the Aayat *"Fasting has been made obligatory upon you"* is sufficient for *Qadha* fasting. When the servant compensates the original act of Ibaadat with a proxy from his side, and he cannot attain the virtue of having performed the original act during its specified time, which he had missed out, so the responsibility fulfilling that act still remains binding upon him. Nevertheless, the need for him to perform it in a time-frame no longer

exists (it is up to him to complete it as *Qadha* as soon as possible).
Therefore, even if there was no *nass* for *Qadha* Salaat and fasting, nevertheless, these acts remain Waajib. But, Allaah ﷻ had revealed the Aayat, *"Whichever of you is ill or on journey, then he should complete it (the fast) on other days."*
With regard to Salaat, Nabi ﷺ said, *"Whoever oversleeps a Salaat or forgets to perform it, he should perform it as soon as he remembers."*
Both these two *nusoos* seek the substitute of the Waajib act. It follows that the same applies to other Waajib acts of Ibaadat, like *nazar* for fasting, Salaat or *I'tikaaf.* The non-completion of these acts of Ibaadat on their specified times, necessitates *Qadha,* for which there is no need for *nass.*
There is however, necessity for *nass* for *Qadha* of those acts of Ibaadat where substitution is not obvious. For example, the payment of money for the mistaken loss of life or limb. Had there been no *nass* to stipulate this payment, then it would not have been obvious to man.
This is the reason why in intentional murder, the giving of *diyat* (blood-money) is not binding upon the murderer, because in this case he has to pay with his life. ***Diyat* is only binding in the case of mistaken killing.** The murderer is not forced to pay *diyat* in intentional murder. However, if the murderer is willing to pay *diyat* and the family of the murdered is willing to accept payment, then there may be an agreement between the parties.

The quality of the ordered act

When the condition of the method of compliance of a *Ma'moor Behe*

is known, then one should appreciate the fact that there is goodness in this ordered act (of Ibaadat). Allaah ﷻ *is Hakeem (All-Wise), He is without fault or blemish. Now when The Hakeem, Faultless One instructs anything, then it is only natural and obvious that there is some or the other goodness therein. That thing is also without fault or bad. And when Hakeem prohibits from anything, then one should know that there is some evil in that thing. It follows that whatever is ordered by Allaah* ﷻ*, then that thing is most certainly good, even if it appears on the surface to be otherwise. To fulfil this act merits reward. Similarly, the prohibited thing is bad, even if it appears to be good, and to carry out this prohibited act warrants punishment.*

The types of *Ma'moor Behe*

There are two types of *Ma'moor Behe.* The first is that *Ma'moor Behe* which in itself is good and nice. This is known as ***Hasan Li-'Ainihi.*** Second is that one, which gives rise to goodness in something else. This is called ***Hasan Li-Ghairihi.***

Hasan Li-'Ainihi is of two types:

(1) That *Ma'moor Behe* which has goodness in its essence and constituents. This gives rise to the *Ma'moor Behe* always remaining with goodness. That is, there is unity between the *Ma'moor Behe* and its quality. The good quality is never separated from the *Ma'moor Behe.* For example Imaan (to accept the Truth in the heart). This always remains good. This is the reason why the servants is ordered to always remain in the state of Imaan. There is absolutely no consent for abandoning it at all. Its responsibility never leaves the shoulders of the

servant, even if life is threatened. There is only goodness in keeping Allaah ﷻ in the heart.

Another example is Salaat. Every part and constituent thereof comprises goodness, because it contains the praises of Rabbul Alameen. Praising Allaah ﷻ is a good act. Allaah ﷻ waives the responsibility of Salaat if the servant has a valid excuse.

(2) The second type of *Hasan Li-'Ainihi.* This has goodness in itself, but the goodness comes by way of something, therefore this is also called ***Mulhiq Be Hasan Li-'Ainihi.*** (In the first type, the goodness exists without any other medium). For example, Zakaat, fasting, Hajj, etc.

Apparently Zakaat appears as though money is being diminished, which is not a good quality. However, the servant (giver of Zakaat) becomes a deputy of Allaah ﷻ and (through his Zakaat) fulfils the need of the poor. In this way, the diminishing becomes spending, which brings about the goodness therein, and this also warrants reward. The goodness in Zakaat comes about by the need of the poor. If there was no need available, then Zakaat could not be dispensed and there would be no virtue attached. Therefore, we understand that the goodness in Zakaat comes about by the need of the poor, which is also its *sabab.* This need also, is brought about by Allaah ﷻ. The choice of wealth and poverty is not with man.

Similar is the case with fasting. Apparently it appears to be an act of hunger and difficulty. However, this hunger is a way of harnessing the rebelliousness of the nafs. The control and overcoming of the nafs gives

rise to goodness in the hunger. It is ascertained that the goodness in fasting is created by the controlling of the desires. If there were no base desires (in man) then there would be no rebelliousness and sin. There would be no need to control anything. This is why *Shahwat* (base desires) is taken as the means and *sabab.* The angels have no *Shahwat,* hence there is no accomplishment or virtue in fasting for them. Since *Shahwat* is a creation of Allaah ﷻ, and the servant has no choice (in its existence), therefore this type is called, ***Muhiq Be Hasan Li-'Ainihi.***

On the external façade, Hajj appears as a tiring and difficult act. Hajj comprises *Ihraam, Tawaaf, Wuqoof-e-Arafaat,* etc. which externally appear difficult. However, all these acts bring about honour and dignity in visiting the House of Allaah ﷻ. This brings about goodness in it. This sanctity of Baitullah is a favour from Allaah ﷻ. This brings about reward in fulfilling the rites of Hajj. It is called *Mulhiq Be Hasan Li-'Ainihi.*

Note: These acts of Ibaadat are excused due to valid cause and reason.

Hasan Li-Ghairihi

The goodness in the *Ma'moor Behe* exists because of some other reason, which is separate from it. The existence of this other factor comes about after the *Ma'moor Behe,* and the *Ma'moor Behe* acquires its goodness after the existence of this other factor. For example, the wudhu of Salaat. On the outside, wudhu is the term given to washing the limbs. On the face of it, it appears as though it is a

squandering of water because the limbs have to washed even if there is no dirt on them. Nevertheless, it is only this washing which will render an important Ibaadat like Salaat valid. This factor, gives wudhu the hue of being a Ibaadat. The Fardh status of wudhu comes after (in rank to) the Fardh status of Salaat. This is the reason why, for those upon whom Salaat is waived, so too is wudhu.

For example, a woman who is menstruating. If someone made wudhu but did not perform Salaat, then there will be a deficiency in quality and reward for that wudhu. The beauty and goodness of wudhu comes with Salaat, hence it is *Hasan Li-Ghairihi.*

Another example is hastening towards Jumuah Salaat. To proceed towards the Jumuah Salaat, after the Athaan of Jumuah is Waajib, owing to the Aayat, *"And hasten towards the Thikr of Allaah ﷻ (Jumuah)."* In this Aayat, hastening is ordered. The reward and virtue of this hastening comes about owing to the Jumuah Salaat. This hastening aids in the fulfilment of the Jumuah Salaat. This hastening will not be compulsory for that person upon whom Jumuah is not compulsory. If a person hastens but has no intention of performing Jumuah Salaat, then there will be no reward in this act of hastening for that person. Therefore this act is called *Hasan Li-Ghairihi.*

The second type of *Hasan Li-Ghairihi*

The goodness in the *Ma'moor Behe* comes due to some other factor. In this case, this other factor comes into existence at the time of executing the *Ma'moor Behe.* For example, to perform Janaazah Salaat. On the external, this appears to be like idol worship and it is

contrary to *Tauheed* (Oneness of Allaahﷻ). However, the right of a fellow Muslim brother is being fulfilled by it, which gives it the hue of goodness. We know that the Salaat for the deceased is due to the goodness of the Islaam of the deceased. If the deceased was not an adherent of Islaam (a Muslim), Salaatul Janaazah would not have been performed for him. For this reason we understand that the means and *sabab* is Islaam, which is the voluntary choice of the believer.

Another example is that of Jihaad. On the external it seems as though it is a means of troubling fellow beings and rendering towns and villages desolate. However, this is a means of raising the Kalimah of Allaahﷻ. It is a means of spreading Tauheed. Therefore beauty and goodness has come into Jihaad. In reality the goodness in Jihaad comes about due to the kufr of the kuffaar. If there was no kufr then there would be no need for raising the flag of Islaam, nor would there be any virtue in it either. Hence, we should understand it thus that the reason for the goodness in Jihaad is kufr. Kufr is the voluntary act of man.

Note: The apparent difference between *Hasan Li-Ghairihi* and *Hasan Li-'Ainihi* is that the reasons and contributing factors of goodness in *Hasan Li-'Ainihi* are creations of Allaahﷻ. There is no action of man therein. Whereas, in *Hasan Li-Ghairihi,* the contributing factors for the goodness therein, like the Islaam of the deceased or the kufr of the kuffaar, are voluntary actions of man.

Note: The Usooliyeen differ greatly on this subject, but the aforementioned discussion clears everything.

CHAPTER FIVE: DISCUSSION ON NAHY

Just as the scale of *Amr* is *Khaas,* so too is the scale of *Nahy.*

Definition

When a speaker who is greater in rank and stature than the one being addressed prohibits him from something, then this is known as *Nahi.* For example to say, *cam+ V ("Do not do").*

The compliance of *Nahy*

It will be Waajib, to comply with the prohibition of a superior. When the prohibition is from The Hakeem, then there is most certainly some evil or harm in the act which is being prohibited from, just as there is goodness in the instruction of an ordered thing.

The types of prohibitions

Insofar as the evil and harm is concerned there are two types of *Nahy.*

Firstly, The prohibited thing is harmful in itself *(Qabeeh Li-'Ainihi)* and **secondly,** there is harm because of another factor *(Qabeeh Li-Ghairihi).*

There are two types of *Qabeeh Li-'Ainihi*

Qabeeh Li-'Ainihi Wasfan – This refers to such a thing whose harm and evils are apparent even logically and by the prohibition itself. For example, kufr, which is the refutation of the Benefactor. To reject and refute a benefactor and to show ungratefulness for a favour are evil tendencies even to the logic, as long as the intellect is still intact and

the benefactor is recognised.

Qabeeh Li-'Ainihi Shar'an

This refers to that thing which the Shariah had shown its harms. Had the Shariah not shown its harms, then this would not have been realised and discernable by logic and intellect. For example, to trade in free humans is not permissible. Trade, according to logic is a good and permissible act, and there is no harm in the essence of trade. The Shariah has clearly defined trade, and attached rules and regulations with it. This makes the Shariah an integral part of trade. If any trade does not have the sanctity of the Shariah then it is regarded as being harmful and bad. After the Shariah has exposed the harms, then the intellect also comes to the same conclusion. As mentioned in the aforementioned example, when a free person is bought or sold, then the Shariah detests and prohibits this trade. **The Shariah has outlined some rules regarding trade. One of them being that the item which is traded in must be such that has some discernable value. No value can be attached to a free human.** The intellect is then guided by the Shariah and realises that trade in free humans is not natural.

The prohibited *Qabeeh Li-Ghairihi* also has two types

(1) Qabeeh Li-Ghairihi Wasfan – This is prohibited from. The harm/evil is not in the thing itself, but due to another factor. This harm remains attached to the prohibited thing. As soon as the prohibited thing comes into existence, so too does the harm. For example, the fast of *Yowmun Nahr* (Eid-ul-Adha) is prohibited. Fasting itself is not harmful or evil, but the day(s) of Eid-ul-Adha are

days of 'feasting' from Allaahﷻ (i.e. we are the guests of Allaahﷻ). This brings about the harm of fasting on those days. Fasting lasts the entire day and so does feasting. Since there is no day of Eid-ul-Adha or part thereof wherein there is no (encouragement of) feasting from Allaahﷻ, hence the prohibition of fasting for this day remains for always. This is why it is called *Qabeeh Li-Ghairihi.*

(2) Qabeeh Li-Ghairihi Mujaawiran – That (prohibited) thing wherein the harm is due to another factor, but that harm does not remain always. Sometimes the harm comes with the existence of the prohibited act and sometimes there is no harm at all. As long as the harm exists, then the act is prohibited from and when there is no harm, then it will be permissible. For example, the trade during and after the Jumuah Athaan. Trade is not bad, but its engagement prevents one from hastening towards Jumuah Salaat, hence it becomes impermissible at this time. **However, if engagement in trade does not hamper hastening towards Jumuah Salaat, then it will be permissible, like if two persons who are riding on one conveyance towards Jumuah Salaat and engaging in trade, then this would be permissible and not prohibited.**

CHAPTER SIX: The ruling of *Nahy:*

Nahy indicates prohibition *(Tahreem* – Haraam).

Sometimes it could indicate *Karaahat* (detestment). If the *Nahy* is absolute, then the ruling of Haraam will apply and if it is not absolute *(Zanni),* then the ruling will be *Makrooh-e-Tahrimi.*

In *Qabeeh Li-Ghairihi Wasfan,* the prohibition is sometimes absolute,

like fasting on the days of *Nahr.* This is unanimously Haraam, even though the prohibition came about from *a Khabar Waahid.* In *Qabeeh Li-Ghairihi Mujawiran,* the prohibition is in the effect of *Makrooh Tahrimi,* even though the prohibition was from an absolute source. For example, trade during the Athaan of Jumuah – **this prohibition is by way of absolute *nass.* Still too, it is *Makrooh-e-Tahrimi.***

Trade is permissible during the Jumuah hastening, as mentioned earlier. There is no paradox between trade and hastening. When the *Manhi Anhu* (in this case, trade) and *Hukm-e-Awwal* (in this case hastening), are such that they can be joined and done in unison, then this gives rise to the prohibition being light.

However, when there is a clear paradox between the *Manhi Anhu* and *Hukm-e-Awwal,* and the two can never be united, then the prohibition is absolute. For example, Nikah is permissible and at times even Waajib, however, Nikah with *a Mahram* (family) is forbidden. Now, Nikah and *Mahram* are such opposites that they can never be done together, hence Nikah to *a Mahram* is absolutely Haraam. If anyone has to ever get married to *a Mahram,* then the Nikah will be baatil and ineffectual. In fact, it will not even be regarded as *a Nikah.*

If, on the other hand, a person transacts after the Athaan of Jumuah instead of hastening towards Jumuah, then although such transaction will be regarded as bad and even worthy of cancellation, **it will nevertheless be effectual and the buyer becomes owner of the bought item.** Since this prohibition is a lighter one, **the transaction will not be totally void.**

This discussion is in reality very in-depth and intricate. It has been outlined above for the benefit of the student.

Note: The requirement for compliance to *Nahy* is ongoing/continuous and immediate. That is, the thing which is prohibited should be terminated immediately without delay and this prohibition will continue unabated.

**********End *of discussion* on Khaas.

CHAPTER SEVEN: DISCUSSION ON *'AAM*

Insofar as the meaning and subject-matter of a word, there are four types: The first being *Khaas* which has been dealt with earlier and secondly *'Aam* which is now under discussion.

Definition of *'Aam*

'Aam is that word which denotes a collection of compound individuals of the same species that is unlimited. It is specified once.

For example, the word, رجال,مسلمون, and other collective scale words are regarded as *'Aam.* The word *Muslimoon* would comprise the collection of individual Muslims, and the word *Rijaalun* that of men. The fact that these words indicate a plural, is distinguished by the scale itself. Those words whose scale is singular but they are used to indicate a collection of individuals are also included as *'Aam,* like قوم ,رهط ,ما ,من etc. These words do not have any attached words to show they comprise a collection, their meanings indicate this, *Rahtun* (a group of people), *Qowmun* (tribe), *Man* (many intelligent beings) and *Maa* (many unintelligent things). Examples are:

A Caravan of people came	جاء الرهط
Arabian people	ناس من العرب
One group should not belittle another	لا يسخر قوم من قوم
Whoever enters it (Haram) will be safe	ومن دخله كان امنا
Whosoever comes with a good deed, for him is ten times its reward	من جاء بلحسنه فله عشر امثالها
Whatever the Rasool ﷺ gives you, adhere to it	ما اتاكم الرسول فخذوه
Whatever is in the heavens and earth makes the Tasbeeh of Allaah ﷻ	يسبه له ما في السماوات و ما في الارض

Note: The word *Qowm* will always refer to a group of individuals and never a single unit. For example, if it said, القوم الذي يدخل هذا الحصن فله الف ربيات *"Whichever group enters this fort will get a thousand rupees."* If three or more people enter the fort then they will be eligible for the prize. If one person enters then he will not qualify. However, the word من denotes a collection of individuals and it can also be used to denote individuals. For example, من صعد السقف فله مائة *("Whoever climbs this roof will receive hundred rupees.")* This means that if one person climbs the roof, he will receive the prize, and if ten people climb the roof they will all receive the prize and even if they climb up one after the other, they will all still get the prize.

If the condition of اوّلا *(First)* is placed after the sentence, then only the first person to climb the roof will receive the money. If ten people climb up at once, then none will qualify for the prize. If they go one

after the other then only the first one will receive it. The ruling for *man* to be *'Aam* still remains because it means that from the many (that climb up) the ruling for the one will apply, when that individual reaches first.

Note: Like, The nouns of numbers ثلاثه *(three),* عشرة *(ten),* احد عشرة (eleven) and تسعون *(ninety)* are all *Khaas.* They are not regarded as *'Aam.*

CHAPTER EIGHT: The Ruling of *'Aam*

The *'Aam* word is absolute in indicating its *Madlool (indicated thing).* When a ruling is established for the *'Aam* word, then this certainty is established for the entire *Madlool,* without any doubt. It becomes obligatory and necessary to practice on this ruling just as is the case with *Khaas.*

For example, السماوات تحتنا *(The sky is below us).* This denotes that all the skies are below. This text makes it absolute that we believe and accept that all skies are meant here.

In the Aayat which says, *"The time (of Iddat) for the pregnant ones is (until) they give birth."* This establishes with certainty that the pregnant woman will end her *iddat* after she gives birth. Practice on this is *Fardh.*

Note: If there is some proof to indicate that the ruling of *'Aam* does not apply to all the individuals contained under it, then this ruling will **not** be adhered to with absolute certainty for all those which are included. In fact, there adherence will be *Zanni* (established by way of deduction). Practice upon this will no longer be *Fardh,* rather it will be *Waajib.* That is, there will be a lessening in the ruling. Since there will be some individuals to which the ruling will certainly not apply because of the proof, hence there is the possibility that there are others also therein to whom the ruling is not applicable. This will render practice on the remaining individuals in the category of *Zanni.* The crux of the matter is that when there is *Takhsees* (exclusions) in the ruling of *'Aam,* then the ruling will no longer remain in the category of absolute, it will

change to *zanni.* Nevertheless, practice thereupon, even after *Takhsees,* will be necessary and *Waajib.* The one who ignores this ruling will be a sinner. The difference will come about in the belief. **If anyone rejects and refutes the ruling of an absolute *'Aam* then such a person will be regarded as a kaffir, whereas the one who rejects the ruling of a *zanni,* will not be kaafir.**

Note: *Takhsees* means that there will be some individuals in *'Aam* upon whom the ruling is not applicable.

<u>Example of *Takhsees*</u>

A Shar`i example of this is in the Aayat, احلّ الله البيع و حرم الربوا *"Allaahﷻ has made trade Halaal and usury Haraam."*

In this Aayat the word *Bai`* (trade) is *'Aam. Bai`* literally means the exchange of goods for goods, and its objective is to benefit and increase wealth. Allaahﷻ has consented to and permitted trade, whatever is included under its definition. However, Allaahﷻ has excluded *Riba* from this consent.

The literal meaning of *Riba* is 'to increase'. From the first part of the sentence, **we understand that by whatever means one exchanges wealth for increase will be permitted,** but the second part, which is adjoining, tells us that the increase in wealth *(Riba)* is impermissible. However, it does not elaborate on the type of increase. This, therefore makes every type of increase in trade doubtful, in that it could be the impermissible one. This second sentence gives rise to *Takhsees,* of the first part of the sentence. This means that there are some ways of increase, resultant of trade which are permissible. This makes the

consent of increase in trade *zanni* and not an absolute ruling, because there is the possibility of some increase being Haraam.

Thereafter, the increase which Allaah ﷻ mentions in the Aayat *(Riba),* is further explained to us by His Nabi ﷺ. It is stated in the Hadith Shareef, *"Ubadah Bin Saamit reports that Nabi ﷺ said, '(The exchange of) gold for* ***gold*** *must be in equal measure,* ***silver*** *for silver in equal measure,* ***dates*** *for dates in equal measure,* ***salt*** *for salt in equal measure and* ***barley*** *for barley in equal measure. Whoever takes or gives extra, has engaged in Riba. You may trade gold for silver as you wish (i.e. for whatever exchange quantities), (but this exchange must be) from hand to hand (i.e. cash exchange). You may trade wheat for dates as you wish, but it must be hand to hand. You may trade in barley for dates as you wish, but it must be hand to hand."*

From this we understand that if two of the same type of goods, which are weighed, are being traded in then the exchange must be in equal quantities. If one exchanges a quantity of wheat for wheat, then both the quantities must be the same, extra on either side will be *Riba.* Even if this excess quantity is not apparent, and on the façade it appears equal, then too it will be impermissible. For example, if someone exchanges 5kgs. of wheat taken today for another 5kgs of wheat which is returned in a few days time, then this will be impermissible, because although the quantities are equal, nevertheless, there is difference in the value of the wheat of todays and a few days later. This delay in exchange is regarded as an excess, in meaning (figurative). This trade will also be haraam, because it is not permissible to deal in

the same type of goods on credit.

If two of similar types of goods, which are weighable, are exchanged, as mentioned in the Hadith, like gold for silver, barley or wheat for dates, etc. then disparity in quantities is permissible. So it will be permissible to exchange two kgs. of wheat for ten kgs. of barley or dates. **Since the condition is that they must be weighable items, hence credit dealings here will be impermissible.** The exchange of 10kg. wheat for 20kg. barley must be contracted, finalised and exchanged in the same venue/ session.

The ruling of permissibility is limited to some individual types of trade, and some types of trade are excluded from this ruling of permissibility. That is, they have been made *Takhsees* from the ruling of permitted trade. This makes the ruling of trade *zanni* and not absolute *(Qat'i).* This leaves the possibility that there could be other types of trade which are excluded from this permission if some proof is presented.

The summary of this is that there are two types of *'Aam.* **Firstly,** that type wherein there is no exceptions and exclusions *(Takhsees)* in the ruling and this ruling is established with absoluteness, wherein there is no doubt. **Rejection of this ruling is tantamount to kufr.**

Secondly, that *'Aam* wherein there is *Takhsees* made to it, once. This is known as *'Aam Makhsoos Minhul Ba'adh.* The ruling of this type is that compliance to the included individual constituents is established by way of *zann.* And also, the fact that there always remains a possibility that the ruling does not apply to some constituents.

However, the ruling will apply to the remaining constituents, as long as another proof is not presented, making further *Takhsees.* **The verdict of kufr will not be applied to the rejecter of this ruling.**

The limit of *Takhsees* in *'Aam*

When it has been realised that there can be *Takhsees* in *'Aam, (Takhsees* meaning that there are some constituents of *'Aam* which are excluded from the ruling which applies to *'Aam),* then it is also necessary to know how many constituents can be excluded from the ruling of *'Aam.* That is, what is the limit of *Takhsees?*

One should understand that the *'Aam* word, which insofar as its scale is concerned, is a singular, even though this word may be used to denote plural, for example, من, ما and that *alif* and *laam* which appears on *ism-e-jins,* like المراة or that scale of *jama'* upon which appears *laam-e-jins,* like النساء *(note that if laam-e-jins appears on a plural word, then the plural meaning of the word is compromised),* then in all such cases, *takhsees* will be possible of all constituents besides one. That is, even if only one constituent remains, the ruling of *'Aam* will apply on it and there is no problem. For example, ايقظ المراة و نوّم الصبيات في الدار- *Awaken the woman in the house and leave the children to sleep*

Even if there is one woman in the house, then this ruling will apply to her. If there is no woman in the house then the order of *'Awaken'* will be superfluous. *Takhsees* on the instruction of *(leave to sleep)* is incorrect. Similarly in the sentence

اكرم من في البيت و اخرج الظالمين– *Honour whoever is in the*

house and expel the oppressors.

If even one non-oppressor remains, then it will be necessary to honour him, and the *Takhsees* for expulsion will be valid. If no non-oppressor remains, then there will be no constituent of من left to honour, which will render the order of honouring ineffective. For this reason it will not be correct to make *Takhsees* from the expulsion. The object is that after making *Takhsees,* there must be at least one constituent of *'Aam* remaining upon whom the ruling can apply. It is not permissible that after making *Takhsees* not even a single constituent remains of *'Aam.*

If the scale of **'Aam is plural,** then after making *Takhsees,* there must remain at least **three or more constituents** upon whom the ruling of *'Aam* must apply, otherwise *Takhsees* will not be valid. This applies to words like قوم, رهط, رجال, مسلمون .

In the sentence:

اكرم المسلمون في الدار و اخرج الفجار– *Honour the Muslims in the house and expel the Fujjaar.*

--There must be at least three Muslims remaining who must be honoured. If there are less than three Muslims remaining, then the order of *"Honour"* is superfluous. In essence, *Takhsees* must not be such that there remains none upon whom the ruling of *'Aam* must apply.

CHAPTER NINE: THE DISCUSSION ON MUSHTARAK

Mushtarak is that single word which is specified and used for different

things which are also of different type. For example the word, عين which is used to mean different things, sometimes it means sun, or girl, or gold or spring. Each meaning has a different connotation. Even the word قروء which can mean menstruation and *paaki.*

The Ruling of *Mushtarak*

The ruling of *Mushtarak* is this that one should not decide on any one meaning of the word without reflection, and investigation. One should carefully reflect on the context and choose one meaning which will be appropriate and suitable. When any one particular meaning is found with relevant proofs, then compliance and practice thereupon is Waajib. However, one will not be looked on that word, since it is not absolute. A Shar`i example of this is the word, قروء which appears in the Qur`aan Majeed. The meaning of this word could either be *haidh* or *tuhur.* The Aayat states that divorced woman should wait (spend an *iddat* of) three قروء . Now, based on this Aayat should a woman wait for three *haidh* periods or three *tuhur* periods? Both these meanings are complete opposites, hence one has to carefully reflect on these meanings. If the meaning is taken to be *haidh* then a woman has to wait three full *haidh* periods for her *iddat* to end and like she will have to wait three full *tuhur* periods if the meaning is taken to be *tuhur.* The Aimmah-e-Mujtahiddeen have carefully reflected upon this word. Imaam Abu Hanifah (rahmatullah alayh) had opted for the word to mean *haidh* in this context.

When one carefully studies the word قروء then it will be noted that it is a plu taken to be *haidh,* then it will be possible for a woman to practice on

the full three *haidh* which follows her divorce, but if the word is taken to mean *tuhur* (as taken by Imaam Shaafi -rahmatullah alayh), then a full three is not possible, it will either be more or possibly less than three. This has been explained in the discussion of *Khaas.*

Note: As long as a meaning for a *Mushtarak* word is not clear, reflection and investigation has to be made on it. Two meanings cannot be taken for one *Mushtarak* word. As with the example of قروء it is not possible to take both the meanings of the word, because these meaning are direct opposites of each other. Even if the meanings of a *Mushtarak* word are not opposites, it will not be permissible to take two meanings at once.

CHAPTER TEN: THE DISCUSSION ON MUAWWAL

When any one word of the *Mushtarak* is preferred and specified, then that word is now called *Muawwal.* After a particular meaning has been found, then the word is no longer called *Mushtarak.* Like the word in the Aayat was *Mushtarak* before the Aimmah-e-Mujtahiddeen has reflected and investigated it. **After the Mujtahiddeen had specified its meaning, then it became *Muawwal.***

A preferred meaning *(zann-e-ghaalib)* is attained by examining the scale of the word and /or by reflecting on the context of the word. *Muawwal* is established by means of *zann-e-ghaalib,* **hence practice on it is Waajib.**

However the preferred meaning is not in the category of absolute. There is the possibility that another meaning taken by another

Mujtahid is correct. **In summary, the ruling of *Muawwal* is *zanni* and not *Qat`i* (absolute).**

SECTION THREE: THE SECOND TYPE IN THE DISTRIBUTION OF LETTERS

The first type in the distribution of letters in the Qur`aan Majeed was regarding the context and meanings of words. This second type explains the proofs, conditions and strata of the meanings.

As far as clear indications of speech is concerned there are four types; *Zaahir, Nass, Mufassir* and *Muhkam.*

Zaahir – This is that speech whose import is clear to the listener, and it conveys such a meaning to the listener which is not (really) the intent of the speaker.

Nass – This refers to that speech whose import and meaning are even clearer to the listener than that of *zaahir,* because this is also actually the intended meaning of the speaker, and this is the real reason for the speech in the first place. A Shar`i example of *zaahir and nass* is found in the following Aayat, *"Make Nikah with what you are able to from the women; two, three or four."*

In this Aayat, Allaah ﷻ had consented to a man marrying up to four wives at the same time. The actual reason for this Aayat is to show this limit. To marry more than four wives at a time is not permissible. Therefore, this Aayat is *nass* insofar as indicating the limit (of four). However, from the word فانكحوا in the Aayat, the listener understands that to make Nikah is permissible in Islaam, however the consent to the

institution of Nikah was not the import of this particular Aayat. The permission for Nikah is evident in itself.

Mufassir – This refers to that text whose meaning is even more evident and clearer than *nass.* The clarity is so plain, that to make any exceptions upon it *(Takhsees)* or to reflect upon its import it superfluous. The Aayat, و قاتلوا المشركين كافة *("And fight with the Mushrikeen, all of them"),* is *nass* insofar as the instruction to fight is concerned, because it was revealed to show this. However, there would have remained the possibility that some Mushrikeen could have been excluded. The word كافة totally removes this possibility of any exceptions. It denotes that all Muskrikeen are included in this order.

Ruling of *Mufassir* – Whatever ruling is established for *Mufassir* is absolute and certain, it must necessarily be complied with. There remains no doubt in it, except the possibility of *naskh* (abrogation), i.e. that the ruling has been abrogated.

Muhkam – When there is corroboration and clarity in a *Mufassir* text, and the possibility of abrogation does not exist, then such text is classified as *Muhkam.*

Note: The possibilities of abrogation and interpretation are removed in two ways.

Firstly if an Aayat of the Qur`aan Majeed shows a quality of Allah Ta`ala then it is *Muhkam,* because the Being and Qualities of Allah Rabbul Izzat will never change or diminish. For example, *"Indeed Allah Ta`ala is aware of all things."* There can never be any possibility of this Aayat being abrogated. Another example is that where our Nabi

ﷺ said, *"Jihaad is continuous since Allaah* ﷻ *sent me until the last of this Ummat destroys Dajjaal."* This Hadith indicates perpetuity. From this we understand that the institution of Jihaad will not be abrogated. In the two abovementioned examples the Aayat and Hadith themselves denote that their respective rulings and connotations will not be abrogated.

Secondly, the possibility of abrogation of some rulings existed during lifetime of our Nabi ﷺ. This possibility ceased with his demise. The first is called *Muhkam Li 'Ainihi* and the second *Muhkam Li Ghairihi.*

Part One

Speech, regarding its clarity is divided into four types. The ruling of the four is this absolute in its indication of the *Madlool.* The level of absoluteness in all of them is the same, practice upon it is Waajib. However, as far as clarity is concerned *Muhkam* is the highest and *Zaahir* is the lowest. This is the reason why in these types there is no *Ta'aarudhe-Haqeeqi.*

Ta'aarudh-e-Haqeeqi is when two proofs are placed together then they reach the level of equality. Clarity is found in all of these (four types), some of a higher level and others lower. If there is a confrontation between any of them then preference will be given to the higher level. If there is a clear "conflict" between two Aayats, where the rulings are different, **then *nass* will be given preference over *zaahir, mufassar* over *nass* and *Muhkam* over *Mufassar.* One single Aayat can contain *zaahir, nass, mufassar* and *muhkam.*** But it is not necessary that if it is *zaahir*

it will also be *nass.*

An example of a confrontation between *zaahir* and *nass* in the Qur`aan Majeed, *"And besides these (women) all the others are Halaal for you."*

After mentioning about the *mahram* females, Allah Ta`ala says that Nikah is permissible with any other woman. The *zaahir* meaning is understood to be the consent of marriage to any woman besides the *mahrams,* whether it is ten or fifty, this Aayat does not place any limit. This Aayat is in the category of *zaahir* regarding its indication of general consent (to marry).

Another Aayat *"Make Nikah from what you are able of women, two, three, four",* stipulates the limit of four. There seems now to be a conflict between these two Aayats. The first one giving general consent, whereas the second on places the limit of four. **However, the first Aayat is in the category of *zaahir,* and the second *nass.*** Since *nass* has preference over *zaahir,* it is established that more than four wives is not permissible.

<u>An example of a conflict between *nass* and *mufassar*</u>

Nabi ﷺ said regarding the *Mustahaadhah* (woman who bleeding does not stop), *"She should make wudhu for every Salaat, and she should fast and perform Salaat".* The actual import of this Hadith is to show the ruling regarding the *tahaarat* (purity) of the *Mustahaadhah,* that as long as the blood continues flowing how she should attain cleanliness. Her wudhu does not remain intact so it explains how she should perform Salaat. The objective of this Hadith is to show that

whenever she wishes to perform Salaat she should renew her wudhu.

If for example, she performed her Zuhr Salaat with one wudhu and then during this same Zuhr time she wishes to perform any *Qadha* Salaat, then it will be necessary to renew her wudhu. This is the ruling according to Imaam Shaafi (rahmatullah alayh).

It is reported in another Hadith, *"She should make wudhu for every Salaat-time."* From this wudhu it is established that she need not renew her wudhu for every Salaat. **She only has to renew the wudhu for every Salaat-time.** With one wudhu during one Salaat time she may perform as many *Qadha,* Nafl or other Salaats that she wishes. This is the ruling according to Imaam Abu Hanifah (rahmatullah alayh).

The first Hadith is *nass* for making wudhu for every Salaat that is read, however there is the possibility that the words *"for every (Salaat) time"* can be added or meant. The second narration has a further dilation where the time-factor is added. There remains no possibility in the second Hadith. This is the reason why Imaam Abu Hanifah (rahmatullah alayh) preferred the second narration, and he has taken the implication of time in the first narration and made it *Muawwal,* which leaves no conflict between the two narrations.

An example of a conflict between *Mufassir* and *Muhkam* is found in the Aayats, *"And take the testimony of two just men from amongst you (for your dealings)."* From this Aayat we understand that whoever is just, he can be made to testify and his testification is permissible. Hence the person who has been lashed for slandering a chaste woman and repented, can also be taken as a witness, because after repentance

he can again be classified as just. However, in another Aayat, *"And do not accept from them (whoever has been lashed for slandering a chaste woman), testification, ever"*, we realise that such a person cannot be used to testify in an Islaamic Court. Such a person forever remains unreliable. Since this second Aayat is *Muhkam,* it is preferred over the first.

Part two

The discussion on the opposites of the second type

There is no confrontation between the categories of this second type. ***Zaahir* comes under *nass* and *nass* can be included in *mufassir.*** It is necessary to dilate on the opposites of this second type so that their reality becomes even clearer. **It is necessary to know the opposite of a thing in order to understand it better.** Whoever has not seen darkness will not properly understand the reality of light. In the first type, each one of the categories were opposites of the other, like *Khaas and 'Aam.* That word which is *Khaas* can never be *'Aam,* and vice versa.

Those two things which cannot exist together at one place and time, are opposites of each other. **The opposites of *zaahir, nass, mufassir* and *Muhkam* are *khafi, mushkil, muj mal* and *mushabeh.***

The opposite of *zaahir* is *khafi.*

Khafi: This refers to that speech whose meaning, insofar as the dictionary definition is concerned, is clear. There is no hidden element in it as far as its scale is concerned. However, the connotation of this speech becomes unclear because of some inherent factor, besides its scale.

Ruling

A search and investigation must be made to determine the object of the *khafi. Khafa* comes in a word to indicate either to give strength or weakness to the meaning. In the Aayat, *"Cut off the hands of the male and female thief",* the meaning of *saariq* (thief) is clear. **It refers to the person who steals something which is protected, at the time when the custodian (owner) is unwary, i.e. he is sleeping, etc.** From this Aayat we understand that the hands of the *saariq* should be cut off.

However, the word *saariq* does **not** wholly refer to some types of theft, like **pick-pocketing and *kafan* theft.** According to the literal definition, these types of theft are also referred to as *saraq,* because in reality theft is taking place. But, in theft also there are degrees of strength and weakness. The (Arabic) terms are also different (for the different types of theft). The word ضرار refers to a pickpocket and نباش refers to one who steals *kafans.* In reality, there is some *khafa* in their theft, hence some investigation needs to be carried out before the punishment of theft *(saraqa)* is meted out to them.

After investigating, we realise that the reality of theft is strong in a **pickpocket,** because he steals from someone whilst **they are awake and in their** presence. The reality of theft is weaker in a ***kafan* thief,** because there is **no real protection** for the *kafan* of the deceased.

Since the perpetration of the pickpocket is greater than that of a normal theft, he deserves to have his hand cut off all the more than a 'normal' thief. Whereas the hand of a *kafan* thief will not be cut off since his crime is less than the others. It is not necessary or binding that the

punishment which is meted out to a thief for a 'normal' theft, be also meted out for a lesser crime. Since there is a doubt in meting out the punishment, the hand of a *nabbaash* will not be cut. Some other punitive measure will be meted out to him.

The opposite of *nass* is *mushkil*

Mushkil: *Mushkil* is when the *khafa* (ambiguity) is found in the actual scale. The *khafa* of *mushkil* is greater than that of *khafi.* The reality of *mushkil* is not found by mere investigation. There is a need for reflection and deliberation also. There are many possible meanings to be found for one *mushkil,* **where every one of them could be the correct one.** It is like a person who changes his features and dress and mingles in a crowd. In order to find him, first a search has to be undertaken and thereafter he will only be recognised after some deliberation and detection.

Ruling: The ruling is that after investigation, reflection and contemplation is also necessary, and until no certainty is ascertained, one should hold this belief that whatever Allaah ﷻ meant (in that text) that is Haqq.

An example is in the Aayat, *"Your women are like planting fields unto you. Therefore go to your plantations however please."* The word انّى *(annaa* - however), in this Aayat is *mushkil.* This word also comes in place of اين to denote place, like in the Aayat, انّى لك هذا *"(O Maryam!) From where did you get this (out-of-season fruits)?"* This word also comes in the meaning of كيف (how), as in the Aayat, انّى يكون لى ولد *"How am I going to bear a child?"*

The issue here is how this word will be interpreted in the Aayat in question. If the translation is taken as being the same as اين then it will mean that a person can have intercourse with his wife through any opening he wishes, front or back. That is, even sodomy will be permissible, *Nauthubillah!* If the meaning is taken to be as كيف then it will mean that just as intercourse through the front is permissible, so will it be permissible to enter through this way in any method and manner desired. That is, it is not necessary to have intercourse in any fixed position.

Now, after some contemplation and thought, we realise that only the second option is possible and permissible. The reason being that the word حرث *(planting field)* is used in the Aayat, and a planting field yields fruits and vegetation. Similar with intercourse. The object of having intercourse is to yield 'crops' in the form of children. Procreation is the objective, and this can only be realised when intercourse is enacted through the front passage of the wife. Intercourse from the back passage (anus) is useless in procreation. Also, if the word is taken to mean اين then the use of the word حرثin the Aayat would be superfluous, and we know that no Speech of Allaah ﷻ is superfluous or without wisdom.

The opposite of *Mufassir* is *Mujmal.*

Mujmal: This is where the *khafa* is even more intense than *Mushkil.* The clarity of meaning and import in *Mufassir* is of a high level, similar is the level of *khafa* in *mujmal.* The import and meaning of *mujmal* is such that it cannot be understood or fathomed without the

dilation and clarification of the speaker himself.

There can sometimes be a unification of the various options in meanings of the *mujmal.*

Sometimes the meaning and import of a *mujmal* word can be a seldomly used one. For example in the Aayat, Allaahﷻ says, *"Indeed man has been created **hallo'aa",*** the word *haloo'aa* is a strange and seldomly used word, whose meaning is unknown, hence *mujmal.* The meaning of this is explained in the following Aayat, where Allaahﷻ says, *"When any calamity afflicts him, he fears (he continuously turns to Allaahﷻ and plots and plans to remove the calamity), and whenever goodness befalls him, he holds his hands (becomes miserly and unappreciative)."*

Sometimes the meaning of a word can be *mujmal* owing to the fact that the speaker shifts the usage of the normal *zaahir* meaning of the word to be a lesser used meaning. For example, the words, *Salaat, Zakaat* and *Riba,* which according to the dictionary, mean; supplication, purify and to increase, respectively. However, Allaahﷻ has taken them to mean specific things. **There are three types of *mujmal.* All three are not discernable without the explanation of the speaker.**

Ruling: The ruling is that whatever meaning Allaahﷻ had intended for that word, it is Haqq, and we accept it fully. We should patiently bear the unclarity in meaning until the speaker has clarified it. If the speaker wishes then he will clarify it and if after this clarification, there is need for further reflection, then it should be carried out.

Mutashaabeh: This is the opposite of *muhkim.* This refers to those words whose true meaning can never be determined by logic or intellectually in this world. To investigate and reflect on these words is also useless.

Ruling: The ruling for this type of words is that there should always be silence maintained regarding their meaning. We accept that whatever their meaning is, there is truth in it. For example, ا ل م *(Aleef Laam Meem).* We accept that only Allaah ﷻ alone knows their true meaning.

SECTION FOUR: THE THIRD TYPE IN THE DISTRIBUTION OF LETTERS (i.e. The method of usage of the letters)

After the meaning of a word is specified, then insofar as their usage is concerned there are two categories; ***haqeeqat* and *majaaz.*** Before we discuss the implications of these two categories, we need to know the meaning of *wada'* (specification).

Wada': A definite meaning should be specified for a word in such a way that whenever that word is spoken, then its meaning should be understood without context. There are a few types of *wada'.*

Wada' Lughwi – If the meaning of a word is in accordance to its dictionary usage. For example, the word اسد which according to the dictionary means, lion – the animal.

Wada' Urfi Khaas – This is where a particular group have specified the meaning of the word. For example, the word فعل which according to the experts of Arabic grammar, means a word which denotes tense

and has meaning.

Wada' Urfi 'Aam – *This is where the general public have coined the usage of a word. For example, the general people have specified the word* دابه *to refer to four-legged animals.*

Wada' Shar'i – This is where the Shaar`i (Allaahﷻ) has specified the usage of certain words, like Salaat, which denotes a specific form of ibaadat in the Shariah.

In all the above categories of *Wada',* the actual word is called the *Maudoo'* and its corresponding meaning, the *Maudoo' Lahu.*

Haqeeqat: When the speaker uses a word for that meaning which is *Maudoo' lahu* (specified in one way or the other) for it, then we say that the word is the *haqeeqat* of its meaning. For example, when it is said, *"The lion came",* then in such a case a real animal lion is meant.

Majaaz: When the speaker uses a word to mean something other than the *Maudoo' lahu* meaning, then we say that the word is *majaaz* to its meaning. For example, if it is said, *"The lion came",* then in this sentence some brave person is meant by the use of the word lion.

PART ONE: THE DISCUSSION ON *HAQEEQAT*

The ruling of *haqeeqat*

The ruling is that the *Maudoo' lahu* meaning is established for the word. For example, in the Aayat, *"O you who believe, make Ruku",* Allaahﷻ intends that the believers make the physical act of Ruku. This is what is desired of them.

Note #1: Any word, be it *khaas* or *'Aam,* its usage can be in the

context of *haqeeqat.* For example the word اسد (meaning lion) is *khaas* and can be used as *haqeeqat* and the word أُسدٌ (meaning many lions) which is *'Aam* can also be used in a *haqeeqat* context.

Note #2: When any word is used, then its meaning should be taken as the *Maudoo' lahu* meaning, as long as it is possible to practice on this meaning. If for any reason it is not possible to practice on this meaning, then the meaning can be taken as *majaaz,* and the meaning is to be taken as *ghair Maudoo' lahu.* For example, the sentence, *"The lion came"* will be taken as referring to a real four-legged lion, and the sentence, *"The Lion recited"* will be taken to refer to some brave person.

Note #3: One should remember that it is not proper to negate the *Maudoo' lahu* meaning of a word. For example, it would not be correct to say ليس باسد for a real lion. However if it is said as an exaggeration, then that is something else. It is correct to negate the word if it has a *ghair Maudoo' lahu* meaning. It will be correct to call a brave man a 'lion', and it would be correct to say ليس باسد in this context. A father is called اب so it would be incorrect to say ليس باب. A grandfather can be called اب *majaazan,* and it would be correct to say ليس باب in this context.

Note #4: Any word can be used either in its *haqeeqi* or *majaazi* context, it cannot be used to mean both at the same time. For example, it cannot be meant, *"Don't kill the lion and brave man"* by saying لا تقتل الاسد. One cannot use a single scale to indicate both meanings at the same time. In the same way, the usage of one word cannot be

used to mean both *haqeeqi* and *majaazi* meanings at the same time.

Note #5: Some times a *majaazi* meaning of a certain word becomes so vogue that whenever the word is spoken the *majaazi* meaning is accepted. This is to such an extent that the *haqeeqi* meaning becomes incorporated into the *majaazi* meaning. In such a case, there would be no harm if both words are meant when it is used. However, to purposely unite the two usages would be incorrect. For example if someone says, *"I will not put my foot in the house of so and so"*, then the *haqeeqi* meaning of "the house of so and so" would be his own house and the *haqeeqi* meaning of "foot" would be naked foot. However, in common usage *(majaazan),* "the house of so and so" would refer to his living quarters, and "foot" would mean enter. So the object of this sentence is that the speaker is saying he will not enter the place where so and so lives, be it with his naked foot or with shoes on, or be it his own house or rented. Whether the speaker enters the house with shoes on or not, he will be regarded as having broken the promise.

Note #6: When the *haqeeqi* meaning becomes a difficult issue, i.e. it is *Haqeeqat Muta'azzirah,* or the *haqeeqi* implementation is not difficult but the normal and habitual usage of that word is meant in *majaazi* context, i.e. *haqeeqi mahjoora,* then the *majaazi* meaning will be taken.

An example of *haqeeqi muta 'azzirah*

When a person takes an oath as follows, *"I take an oath in Allaah's* جل جلاله *Name, I will never eat from this date-palm",* then if he eats the leaves or bark of the tree he will not have broken his oath, whereas in

reality he is supposed to have broken it. In practice it is difficult to eat the leaves or bark of the tree, hence the statement of the speaker is taken to mean the norm and that which is not difficult. Therefore in this case, the *majaazi* meaning is taken and the statement will be taken to mean only the dates themselves and not any other part of the tree.

An example of *haqeeqat mahjoora*

When a person taken the oath, *"I take an oath in the Name of Allaah ﷻ that I will never place my feet in Zaid's house",* then if this person stands outside Zaid's house and places only his feet in Zaid's house, then in reality he is supposed to have breached his oath. This action will also not be difficult to do, but in normal speech the statement *"Will not put feet in"* refers to entering and not in the literal sense. Therefore in this case also, the normal usage will be taken into consideration and this person will only be regarded as having breached his promise if he enters Zaid's house.

Note #7: Sometimes the *haqeeqat* is not totally left out, it is used, but the *majaazi* meaning has gained greater popularity amongst the masses. Or the *majaazi* meaning is the one that comes first to mind when the statement is made. In such circumstances, Imaam Abu Hanifah (rahmatullah alayh) gives preference to *haqeeqi* meaning, whereas Saahibain (rahmatullah alayhima) opt for the *majaazi.* For example, if a person says, *"I take an oath in Allaah's ﷻ Name, I will not eat of this wheat",* then the reality is that he will not eat the pods of the wheat plant. This *haqeeqi* meaning is also acceptable and in use.

People roast the wheat pods and eat them, sometimes they crush and chew them. Therefore, according to Imaam Saheb, if this person roasts and crushes the pods of wheat and eats them he will be regarded as having breached his oath, and not by eating the bread which was made using this wheat. Saahibain, on the other hand take the *majaazi* meaning and say that if this person eats the bread made of this wheat, he will have breached his promise. Or according to *Umoomul majaaz,* a person will have breached his oath if he eats the bread of this wheat or if he eats the roasted and crushed pods.

PART TWO: The discussion on the context of leaving out the *haqeeqat*

Since we have realised that sometimes the *haqeeqat* is left out or *mahjoor,* then it is only appropriate that we also know the context and contributing factors. ***Haqeeqat* is left out due to five factors:**

1. When the context is something which is vogue or the norm. For example, when a person says, *"I take an oath in the Name of Allaah ﷻ that a hajj is binding on me",* then the *haqeeqi* meaning of hajj is to intend, but according to the Shariah hajj is the name given to a specific ibaadat. Since in an oath a Shar`i ruling is sought, therefore this *majaazi* meaning of the word hajj will be taken and the *haqeeqi* meaning will be left out.

2. The word itself is such that when the *haqeeqi* meaning is left out, the elements of the letters of the word become the context. There is no need for an external context. This occurs at such an instance when

such a meaning is taken for a word where its constituents are not of the same type. Some constituents have so much intensity that they no longer remain a constituent of the word and some have such weakness that it is as though they no longer can be classified as a constituent of the *Maudoo` lahu.*

An example of those constituents whose meaning is more intense/greater than the *Maudoo` lahu*

The word فاكهة (fruit) is utilised for those things which are eaten for sweetness, taste and vigour. Watermelon, sweet-melon are also constituents of this word, so are grapes, pomegranates and dates.

Together with sweetness and taste, dates, pomegranates and dates provide nutrition and sustenance. A person can survive by only eating grapes, he will not starve. However, by eating watermelon or sweet-melon, a person's hunger will not be satiated. This is not a substitute for food. It is only eaten for its taste. Grapes, dates and pomegranates have more than the normal definition of fruit, and it is as though they are not even constituents of the word fruit, but rather they fall under the category of foodstuff. Therefore if anyone makes the following oath, *"I take an oath in Allaah's ﷻ Name, I will never eat fruit (faakiha)",* then if he eats pomegranates or dates, then he will not have breached his oath, because it is as though these items are not classified as fruits. The word *fakihah* will only apply and refer to tasteful and 'pure' fruits.

An example of those constituents whose meaning is less intense than the Maudoo` lahu

The word لحم (meat) originates from the word التحام whose meaning is something sharp and forceful. Since meat constitutes blood which has the quality of force, hence meat also shares this quality, which gives rise to the word لحم for meat. The word لحم is used for that thing which has vigour in it.

Meat is made up of two constituents; one is the meat of land animals and the other of sea animals. The meat of fish is also called لحم as it is mentioned in the Aayat و تاكلون لحما طرّيا.

However, the meat of fish is so deficient (according to the initial definition of meat) that it is as though it does not even fall under the classification of meat. In reality, a fish does not have blood, because a creature which has flowing blood cannot survive under water.

Hence, if a person takes the oath, *"I take an oath on Allaah's ﷻ Name, I will never eat meat"*, then if he eats fish, he will not have breached his promise.

3. Sometimes the *haqeeqat* is left out because of such a context which is not part of the *haqeeqat* but it is adjoining. For example, if someone says, *"Divorce my wife, if you are a man"*, then in reality *(haqeeqat)* he is making someone else his representative in divorcing his wife. However, the adjoining words, *"if you are a man"*, make it apparent that the object of the speaker is not to give the choice of divorce to the listener but rather to make evident his helplessness and also to tease him.

Similarly, the words of Allaahﷻ, *"And whoever wishes, he may believe and whoever wishes he may make kufr. Indeed, We have prepared for*

the oppressors, The Fire." The *haqeeqi* import of the Aayat is that Allaah ﷻ is giving the choice of believing and not. However, the adjoining context of *"Indeed, We have prepared for the oppressors, The Fire",* makes us realise that the *haqeeqi* meaning is o be abandoned. A warning is sounded for kufr.

4. Sometimes the *haqeeqi* meaning is left out owing to an adjoining sentence of the speaker or a specific intention. For example, a person may say to his wife in a rage of anger, ***"If you go out, you are divorced".***

The *haqeeqi* meaning is that whenever the wife leaves the home after he said this, she will be divorced. However, **the state of anger of the husband is taken into account and this statement is taken to only mean the present situation.** Logic dictates that when his anger cools, his intention of divorce no longer holds if she goes out. **His condition of *"If you go out"* holds good only for the duration of his anger.**

5. Sometimes the speech does not even warrant being taken with its *haqeeqi* meaning. The contributing factor to this will be the reason this statement was made in the first place. Like the statement of Nabi ﷺ, *"Indeed actions are (based) on their intentions."* The *haqeeqat* of this sentence is that the existence of actions depend on their intentions, whereas many actions are carried out by the hands, feet, etc. and there is no intention attached therewith. Therefore, we realise that something is missing from this sentence, and that is the following, *"Good actions and evil actions are (based) on their intentions."* If the intention is good, then the action is good, even though it may seem bad

on the external. Likewise, the action is bad if the intention is bad, regardless of how nice it may appear externally. It is apparent that some parts are missing in this sentence.

Also in the Hadith, *"Mistakes and forgetfulness have been lifted from my Ummat",* it appears according to the *haqeeqi* that this Ummat do not make mistakes nor forget. However, this is not the meaning. The meaning of this Hadith is that the sins committed in error or forgetfully are overlooked (by Allaah ﷻ). They are forgiven. They will not be reckoned for in the Aakhirat (hereafter).

PART THREE: THE DISCUSSION ON MAJAAZ

The definition of *majaaz* has been discussed previously, where the *ghair Maudoo' lahu* meaning is taken instead of the *Maudoo' lahu* meaning.

That is, if another meaning is to be used for a word instead of the *haqeeqi* meaning, then there has to be some sort of connection and relation between this meaning and the *haqeeqi* meaning. If there is no connection between the two meanings, then this cannot be called *majaaz.* So if for example someone says, 'sky' and means the earth, then this is totally incorrect.

Insofar as this connection is concerned there are **two types.** This connection can be either in **form or meaning.** If it is in **form** then it is called ***Majaaz Mursal*** and if this connection is in meaning then it is termed, ***Isti'aara.***

The meaning of the connection being in form is that externally and

apparently there appears to be a connection between the two *(majaaz* and *haqeeqi),* without any medium. It is also clear that there is no need for any other factor wherein the connection needs to be sought. However, there is no need for these two to be inextricably linked, where they cannot be separated, like rain and the clouds, where these two have such a strong bond in form, that they are regarded as one. It is however, possible for there to be clouds and no rain. This is a discernable material example. A Shar`i example would be the acquisition of *mielk-e-mut'a* (right of cohabitation) which goes together with *mielk-e-raqaba* (ownership of a slave-woman).

A connection in meaning means that the two things depend on a third thing for their connection, and also that the two things share the same quality. For example, 'lion' and a brave person, both share the quality of valour. Other than this, there is no outer connection between the two. The Shar`i reality of a connection in meaning is that one of the two things must have a specific Shar`i connotation, and the second thing should share some similarity. For example, *sadaqah* (charity) and *hibah* (gift). *Sadaqah* means to make someone else the owner of (one's) wealth without any exchange. *Hibah* also has the same meaning. Both share the quality of passing ownership without any exchange (of goods or benefit). There is a connection between the two in meaning. This is why it will be permissible to interchange between the two words. The difference is that *sadaqah* is suggestive of mercy and benevolence, and it shows some sort of disgrace for the recipient. Whereas *hibah* suggests honour and affection, and both the giver and taker deem it a

sort of pride. **There are 23 scenarios/types under the banner of *Majaaz-e-Mursal:***

1. If there is a connection of reason (cause and effect - *sabab* and *musabbab)* between the two. In this case the one can be applicable to the other and vice versa. For example, rain and greenery/vegetation. Rain is the cause of greenery and greenery is the effect of rain. It will be permissible to say 'rain' and refer to greenery.

2. It is permissible for the *musabbab* to be applicable to the *sabab.* For example, liquor is the *musabbab* and grapes are the *sabab.* Therefore it will be permissible to refer to grapes and mean liquor. An example of this is the Aayat, *"Indeed I saw myself squeezing liquor (grapes)."*

3. Sometimes the connection between the two things is by part and whole. One thing is the whole and the other a portion. In this case the word for the portion may be used to refer to the whole which is the *haqeeqat.* For example, to say 'finger' and mean fingertip, would be correct. An example is in the Aayat, *"They place their fingers in their ears."*

4. The part is mentioned meaning the whole. For example, the word 'neck' can be said to mean the whole body, as in the Aayat, *"The freedom of the neck (slave)."*

5. Two things whose connection is inextricably linked *(laazim* and *malzoom).* The inference of the one indicates the other. For example, something that speaks and something which indicates speech (i.e. its existence gives a message). For example, in the statement,

"Everything speaks of the existence of Allaah ﷻ," the indication is to the message found in everything in existence and not to everything actually speaking, because every existing thing does not have tongue.

6. The utterance of the one *(malzoom)* indicates the other *(laazim),* like if it is said, *"Tighten your trousers",* then the *laazim* is meant, which is *"Keep away from women".* Therefore it will be permissible to say, *"Tighten your pants"* to indicate precaution from cohabitation. Words similar to this are mentioned in the Hadith Shareef regarding the last ten days of Ramadhaan, where Nabi ﷺ abstained from cohabitation with his wives.

7. Where two things have the connection of being conditional and general. It is permissible to state the conditional meaning the general, like using the word شفر which means a camel's lips to indicate the lips of any living thing.

8. To state the general and mean the conditional, like saying 'day' (اليوم) to mean The Day of Qiyaamah. As it appears in the Aayat, *"To whom belongs The Day."*

9. Where two things have the connection of *'Aam* and *Khaas,* and to mention the *khaas* meaning *'Aam,* like saying ناطق (speaking being) and meaning animal.

10. To speak the *'Aam* and mean the *Khaas,* like saying ملاءكه and meaning Hadhrat Jibraeel and Mikaeel (a).

11. Where two things have the connection of *Idhaafat* (possession), when one is excluded and the other is used in its place. For example in the sentence, *"Ask the village",* the word

"inhabitants" was excluded. It was supposed to have been, *"Ask the inhabitants of the village."* In this case, the one word was left out and replaced by the other.

12. This is where the possessed thing is excluded, like in the sentence, *"The slave was hit",* the word 'Zaid' was left out. It was supposed to be, *"Zaid's slave was hit."*

13. Where two things have a 'neighbourly' connection, and the one is meant for the other, like *"The drain/gutter ran."* Here is meant that the water ran.

14. Where two things have a adjacent-like connection. That is, to state the quality with which something is adorned, like to call a student of Deen *'faadhil'.*

15. Where the quality whereby something was described in the past, it is done so in the present as well. Like calling a fatherless adult an orphan.

16. Where two things have the connection of one being a holder and the other the held. So to mention the holder and mean the held, for example, to say glass meaning water. So if a person says, *"Give me a glass",* then he means to give him a glass of water.

17. To mention the held and mean the holder, like saying, *"He has reached the Mercy of Allaah",* meaning he has reached Jannat, which is the place of Allaah's mercy.

18. Where two things have the connection of instruments. Like the tongue is the instrument of speech. For example to say, *"Long tongue"* means a person speaks too much, or to say, *"His tongue*

moves excessively", i.e. he speaks too much also.

19. Where two things have the connection of one being a substitute/alternative for the other. Like saying, "blood" and meaning *diyat* (blood-money).

20. Where two things are opposites of each other, and the one is mentioned to mean the other. Like saying, 'blind' to mean a seeing person.

21. To add an extra letter, like in the Aayat, ليس كمثله شئ *("There is nothing like Him (Allaahﷻ)",* the letter ك is extra.

22. For any letter to be excluded. For example, in the Aayat يبيّن الله لكم ان تضلّوا the word لا is left out which comes after the ان .

23. To use a common noun in a positive sentence to denote generality. For example, in the Aayat علمت نفس ما احضرت it should be كل نفس.

<u>The discussion on *Iti'aara*</u>

When there is a connection in meaning between two things, then it is called *Isti'aara.* For example if it is said, *"I saw a lion shooting an arrow",* then a brave person is meant. The quality of valour and bravery which is outstanding in a lion, is also used to describe a brave person, because they share this quality.

In *Ista'aara* one is called *Mushabbah,* like the brave person in the above example, and the other is called *Mushabbah Behe,* which will be the lion.

The connective medium *('alaaqa tashbeeh)* will be bravery. There will also be a contextual factor which indicates to the connection and

whereby one will recognise *Isti'aara.* In the example, this would be *"shooting an arrow",* because it is obvious that a lion cannot shoot arrows, so the word 'lion' means a brave person.

PART FOUR: The Ruling of *majaaz*

The ruling is that whatever meaning *ghair Maudoo'* directs, that will be established and compliance will be accordingly.

Note #1: *Majaaz* can also be *khaas* or *'Aam.* For example, the sentence, *"I saw the lion shooting an arrow"* is *Khaas* and *"I saw the lions shooting arrows",* is *'Aam.*

Note #2: This is also possible that the word is *Khaas* and the *majaaz* is *'Aam,* because the generality (being *'Aam)* in *majaaz* is due to the *ghair Maudoo' lahu* meaning. For example, the word صاع (a measure of a wooden container) is *khaas.* It will be permissible to sell one *saa'* for two *saa'.* However, whenever one mentions the word *'saa'',* then the actual container is not meant, in fact, whatever is being weighed in the *saa'* is meant. Like it is said, *"Give me one saa' wheat".* Now since the mentioning of the word *saa'* means the contents of the container, it is *majaaz.* When anything which is measured in the *saa'* is spoken about then this is *majaaz 'Aam,* even though the word *saa'* is *khaas.* For example, Nabi ﷺ said, *"Don't sell one dirham for two dirhams, or one saa' for two saa's"* – now in this Hadith the word *saa'* indicates to anything that is weighed and not the actual *saa'* container. **That is, whenever the same type of goods are transacted in they must be of equal weights.** One *saa'* of wheat cannot be exchanged for two

saa' of wheat. Now in this context the word *saa'* is *'Aam* in its usage although it is a *khaas* word.

Note #3: Sometimes a word can be *haqeeqi* from one aspect and *majaazi* from another. When a word shifts from its dictionary meaning and takes on another meaning, then we call it ***Man qool.*** If this movement of meaning is from the side of the Shariah, then we say it is ***Man qool Shar'i.*** If this movement in meaning is executed by a group, then it is called ***Man qool Istilaahi.*** If this change in meaning is due to common usage, then we call is ***Man qool Urfi.*** Like the word 'Salaat' – insofar as its dictionary definition it means *dua* (supplication), but according to the Shariah this word is now used to indicate the *Ibaadat* of Salaat.

Note #4: When the usage of the *haqeeqi* meaning of the word is rare, then the word becomes used primarily in its *majaazi* context. And if this *majaazi* usage becomes very common, then this *majaazi* meaning will become *haqeeqi.*

Note #5: When a word's *majaazi* meaning becomes so vogue, that whenever the word is spoken, the *majaazi* meaning immediately comes to mind, then it is called ***Majaaz Muta'aarif.***

Note #6: This entire discussion was regarding the *haqeeqat* and *majaaz* of individual words. The *haqeeqat* of sentences refers to the connection of the verb to the *haqeeqi faa'il* (doer of the action). For example, *"Allaah* جل جلاله *has grown the vegetation".* The meaning of *majaaz* in the context of sentences is when the verb is connected to something other than the *haqeeqi faa'il.* For example, *"The rain has*

grown the vegetation." ---in this case the rain is the apparent cause.

Note #8: If the meaning of any word is taken to be anything other than the *Maudoo' lahu* meaning, and there is no connection or correlation between the two meanings, then this is called, ***Murtajal.*** This word is also the *haqeeqat* of this other meaning. Its usage has now been specified for this new meaning.

PART FIVE: THE DISCUSSION ON *SAREEH* AND *KINAAYAH*

Whether a word is *haqeeqi* or *majaazi,* it can either be *Sareeh* or *kinaayah.*

Sareeh

This is the where the word is absolutely clear in its import. There is no ambiguity or other possibility, whether it is *haqeeqi* or *majaazi.* Regardless of what context the word is used, its common usage and clarity leaves no doubt in its import and connotation. For example, when a person says to his slave, *"You are free"* or to his wife, *"You are divorced",* then according to the Shariah, these words, owing to their common usage and clarity are *Sareeh* and they leave no doubt or alternative possibility (to meaning).

Ruling

There is no need for any intention to be present for the effect of a *sareeh* statement to occur. The ruling will be as the speech states. That is, (as in the above examples) the slave will be free and the wife will be divorced. This effect will take place even if these statements come to the

tongue without any intention.

CHAPTER FIVE: THE FIFTH TYPE IN THE DISTRIBUTION OF LETTERS

With regard to the types of letters and the way they effect the rulings of the Shariah, there are four categories;

'Ibaaratun Nazm, Ibaaratun Nazm, Dalaalatun Nazm and Iqtidhaa'un Nazm.

Ibaaratun Nazm

If the word fully indicates to the *Maudoo' lahu* meaning or partially, and it is also the speakers actual objective, then such an indication is called *Ibaaratun Nazm.* It is also called *Ibaaratun Nass.* Such an indication which establishes a ruling is called *Thaabit Behe Ibaaratun Nazm.* When a Mujtahid proves any ruling with this indication, then it is called *Istidlaal Be Ibaaratun Nass.*

Ishaaratun Nazm

If the word fully or partially indicates the *Maudoo' lahu,* but it is not the actual objective of the speaker, then it is called *Ishaaratun Nazm,* which is also called *Ishaaratun Nass.* If any ruling is established thereby it is called *Thaabit be Ishaaratun Nazm.*

An example of *Ibaaratun Nazm* is, *"(A fifth of the booty is for) The Fuqaraa Muhaajireen, those who were taken out of their homes and wealth."* (The kuffaar annexed their wealth). The object of this Aayat is to show that the Fuqaraa Muhaajireen are worthy of a 1/5 of the spoils of war. Their share has been compulsorily stipulated. This has been

established from the text of the Qur`aan Majeed. This ruling is established by *Ibaaratun Nazm.* It is also termed *Thaabit bin Nassil Istilaah.*

An example of *Ishaaratun Nass (Nazm)* is the statement of Allaah ﷻ, *"And (it is binding) on the fathers of the (breast-fed) children, their (mothers) maintenance and clothing with goodness (in fair measure)."* The objective of this Aayat is to show the obligation of the maintenance of women by their husbands. However the words which describe the fathers, *Mouloodil Lahu,* indicates another meaning, which is not the actual import of the original sentence. This part indicates the special relationship the children have with their fathers. From this we realise that the cause of the child being born is the (biological) father (who is responsible for the maintenance). If the mere word *'ab'* were to be used then it would not have conveyed this meaning. **From this we realise that the lineage of the child is established through the father. If the child is Arabian and the mother non-Arabian, then the child will be Arabian.** This (showing the lineage of the child) was not the actual objective of this Aayat, hence this is known as *Ishaaratun Nass (Nazm).*

Another example of *Ishaaratun Nass* is the Aayat, *"Cohabitation with your wives has been made permissible for you, during the nights of fasting (in Ramadhaan). "*The actual objective of the Aayat is to show that cohabitation with one's wife is permissible during any portion of the nights of Ramadhaan. Even during the most latter portion of the night.

However, cohabitation during the last portion of the night would

necessitate bathing only after *Subh Saadiq.* This would mean that the first few moments of the fast would have to be spent in the state of major impurity *(janaabat).* From this we extract the ruling that there is no harm to a fast if the first portion of it is in the state of *janaabat.* This ruling is not the objective of this Aayat, it is a connotational meaning. This is ascertained through *Ishaaratun Nazm.* That ruling which is extracted through *Ishaaratun Nazm* is sometimes a portion of the *Maudoo' lahu* meaning and sometimes it is integrally linked to it.

Dalaalatun Nazm

Where there is such a cause in the *Maudoo' lahu* meaning of a word, that without any reflection, the listener immediately discerns it, and this cause is the basis of the ruling of this *Maudoo' lahu* meaning. Also, if this cause were in some other context/place, then too it would yield or indicate this ruling. This indication is also the objective of the speaker. This indication of the ruling of the word, which is not mentioned is called *Dalaalatun Nazm.* For example, Allaah ﷻ says, *"And do not say to them (your parents), oof."* From this Aayat we ascertain that children cannot even say the word 'oof' to their parents. There is pain and hurt caused by the usage of the word 'oof', hence to use this word is impermissible. So this word 'oof' also indicates that it is impermissible to hit parents, because hitting would cause even greater pain and hurt. Therefore the word 'oof' is *Dalaalatun nass* for the ruling of impermissibility of hitting one's parents. The *Hurmat* (being made Haraam) of hitting parents is established through *Dalaalatun Nazm (Thaabit be Dalaalatun Nazm).*

Iqtidhaaun Nazm

If the indication of a word is on a preceding *Maudoo` lahu* meaning, whose acceptance and establishment was necessary in the first instance. Without this, the *Maudoo` lahu* meaning would be incorrect according to the Shariah. That is, the *Maudoo` lahu* meaning is dependant on this necessity (of accepting a previous indicative ruling). Then the *Maudoo` lahu* will be the necessary corollary of it. The word being indicative of a previous corollary is called *Iqtidhaaun Nass.* For example, if a man says to someone, *"Free your slave from me (i.e. on my behalf)."* How can the slave of the listener be freed on behalf of another? Freedom must come from him, the owner. Freedom means the separating of the fetters of ownership. Since the speaker is not the owner of the slave, then for him to free the slave is not possible. Therefore in this case, for this statement of the speaker to be valid, there is a need for some previous Shar`I corollary. The objective of the speaker's statement is, *"Sell your slave to me for a thousand and then become my representative in freeing it."* This is called *Iqtidhaaun Nazm* where the speaker's statement needed a preceding corollary. An example of *Iqtidhaaun Nazm* in the Qur`aan Majeed is the Aayat referring to the fifth portion of booty for the Fuqaraa Muhaajireen. The object of this Aayat is to show the portion applicable to the Muhaajireen Fuqaraa. The word 'Fuqaraa' indicates that these people have nothing. They own nothing. But the next part of the Aayat says, *"from their homes and wealth",* and this indicates that they do own something, so how can they be Fuqaraa? This word

'Fuqaraa' necessitates that the Muhaajireen relinquished their ownership of their homes and wealth, hence they became Fuqaraa. The Muhaajireen lost their wealth and homes to the kuffaar when they migrated, hence they became paupers and were rightful of one fifth of the booty.

Hence the word Fuqaraa indicates to the fact that the Muhaajireen relinquished and lost their possessions, which occurred previously, is known as *Iqtidhaaun Nass.* The ruling which comes out from here is that the wealth of Muslims which is annexed by the kuffaar in *Daarul Harb* (non-Muslim country), no longer remains the property of Muslims and they lose their right over it. This is known as *Hukm Thaabit be Iqtidhaaun Nazm.* It is also known as *Muqtadhaa.*

The stages of *Dalaalat* (indication)

The rulings established through *'Ibaaratun Nazm* and *Ishaaratun Nazm* are the same and both are compulsory to practice upon. However, if there is a clash between the two rulings and the ruling of the one is negatory or contrary to the other, then *'Ibaaratun Nazm* will be given preference over *Ishaaratun Nazm,* because the ruling of *Ibaraatun Nazm* is the actual objective of the statement.

Ishaaratun Nazm and *Dalaalatun Nazm* are also equal. However, if there is a clash between the two, then preference will be granted to *Ishaaratun nazm,* because this ruling is extracted from the sentence itself, whereas *Dalaalatun Nazm* is extracted from the meaning and import.

Absolute rulings are also extracted from *Dalaalatun Nazm* and

Iqtidhaaun Nazm. If there is a conflict between the two then preference will be given to *Dalaalatun Nazm.*

From these types of proofs and indications, rulings of *Hudood* and *Kafaaraat* are permissible. And Allaahﷻ knows best. Alhamdulillah, this brings to close the discussion on the letters and text of the Qur`aan Majeed. You may study this subject further and in more depth in the Arabic Kutub dealing with *Usool-e-Fiqh.* Now, with the *Fadhl* of Allaahﷻ, let us discuss regarding the Sunnat.

PART TWO: THE DISCUSSION ON SUNNAT

The Definition of Sunnat

The speech and actions of Nabi Muhammad Mustafa ﷺ and his silence when any action was enacted in his presence are all classified as Sunnat and Hadith. Sometimes, the speech and actions of the Sahaabah ؓ are also termed Sunnat.

Just as there were four categories in the discussion of the letters and text of the Qur`aan Majeed, these same apply to the Sunnat as well, hence there discussion here is unnecessary. Here we will discuss those aspects which are specific to the Sunnat and not applicable to Kitaabullaah, and are in relation to *Usool-e-Fiqh.*

CHAPTER ONE

PART ONE: The classification of Sunnat

Sunnat is classified in **four parts,** and each one in turn are subdivided.

The first part is regarding the continuity in the transmission of Hadith, and how it reached us via the Sahaabah ﷽, the Aimmah-e-Muhadditheen, etc. Regarding these different ways of the Hadith reaching us, there are three: *Mutawaatir, Mash-hoor* and *Khabar Waahid.*

Mutawaatir

This refers to those narrations whose chain of narrators is so huge in every era, that it would not be possible to say that all of them are wrong or liars. This chain also remained constant from the era of Nabi ﷺ right until the last narrator. Such Ahaadith are called *Mutawaatir.* The narrating of such types of Ahaadith are termed *Tawaatur.*

There is no specified limit to this chain, that they must be 50 or 25, whereby it can be said that they are unanimous. In fact, this decision is reached based on the condition, era and reliability of the narrators. If the narrators are all pious and reliable, then even a small number of them will suffice, otherwise a large contingent is required.

Just as regarding the Qur`aan Majeed, that in every era, a large number of people recited and narrated it. There was no change in any letter or mark in the Qur`aan Majeed. It is logically inconceivable that so many different people in different places and through every era, are all unanimous on the same thing, and yet there can be errors therein. This is proof for the veracity and genuineness of it.

This is the example of *Tawaatur Haqeeqi* and *Lafzi* (where everything is precise to the tee). There are sometimes such transmissions, where there may be slight variations in the actual wording of the Hadith, but

there is unanimity in the purport and subject-matter. This is known as ***Mutawaatir Ma'nawi.*** An example of this is the Ahaadith on *Masah alal Khuffain,* where there are slight variations in the wordings of the various Ahaadith, but there is such a large number of narrators, that it is classified as *Mutawaatir.* There are many other such cases.

The ruling of *Mutawaatir*

Absolute and certain knowledge is acquired through these narrations, wherein there is no scope or possibility of error or doubt. This (certainty) can be likened to what a person sees with his naked eyes. **It is Fardh to belief in this. Any negator of such narrations is kaafir.**

Mash-hoor

These refer to those Ahaadith whose number of narrators, during the era of the Sahaabah (radhiallahu anhum) did not reach the level of *tawaatur.*

But this stage of *Tawaatur* was reached either during the second or third eras (eras of the Taabieen and Tab-e-Taabieen). Such narrations are called *Mash-hoor.*

Ruling

Such narrations reach the level of great satisfaction, which render them true (authentic) and strong. However, they are on a slightly lower level than *tawaatur.* **Belief in them is essential and the negator thereof will not be classified kaafir.**

Khabar Waahid

Any narration which does not reach the level of *tawaatur* in any era from the third era downwards, is classified as *Khabar Waahid.* Anything less than *tawaatur,* regardless of how many narrators, will be classified as *Kha bar waahid.* Whether there is one narrator, two, three or many.

Ruling

To practice on these narrations is Waajib. They reach the level of *Zann-e-Ghaalib.* **The negator is termed a *faasiq.*** If any such correlation is found for the *Khabar waahid* that confirms its veracity, then this will raise its level to certainty. Knowledge of certainty can be attained from such *Kha bar waahid.*

PART TWO

Certainty is achieved by *Khabar mutawaatir* and *Khabar mash-hoor.* There can be no discussion (criticism) on the narrators of these two categories. However, the narrators of *Khabar waahid* are of a lesser status than those of *mutawaatir* and *mash-hoor,* and discussion on them may be undertaken. Based on the conditions of the narrators of *Khabar waahid,* it is subdivided.

First stage

If the narrator is just, reliable and famous in the field of fiqh and ijtihaad, then the narrations of such narrators can become proof and practice thereupon is necessary. **If there is *Qiyaas* which opposes it, then such *Qiyaas* will be ignored.**

Second stage

The narrator is just, reliable and has a good memory, but his stage in (the understanding of) fiqh is lesser, then too practice on this narration is necessary. However, if there is an opposing *Qiyaas,* then a correlation between the two must be sought, failing which the *Qiyaas* will be granted preference.

Third stage

If the narrator is unknown and if none of the Ulama-e-Salf have denounced him, then silence will be maintained on this narration. This narration may be worth acceptance. If there is an opposing *Qiyaas* then practice will be on it. If it is totally in opposition to the *Qiyaas* then this narration will be abandoned. If any of the *Salf* Ulama have rejected the narration, then it will be discarded. If any narration did not surface during the era of the *Salf,* where comment could be made on it, then practice on it will be permissible, and not obligatory. If any *Qiyaas* opposes it then this narration will be rejected.

THIRD PART: THE CONDITIONS OF THE NARRATORS

Four things are necessary for a narrator to have; intelligence, *zabt* (good memory/comprehension), *'adaalat* (honesty/integrity) and Islaam.

Intelligence

This is a strength in the human body. The heart and intellect are perceptry instruments for what is known as the five senses. The mind is

like a guiding light for the heart, just like the eye cannot see without light, so too can the heart cannot perceive things without the guidance of the mind. When the perception of the five senses reach their limit, the guidance of the intellect comes into play.

For the narrator to have total and complete intellect is a condition. An insane person has a deficient intellect and the narration of a child is of no consequence. However, the 'child' must be of such an age that he can understand and properly comprehend speech, and he must have heard the narration during childhood and relate it after attaining maturity. In such a case his narration will be acceptable.

Zabt (Comprehension / memory)

To listen to a Hadith as it deserves to be heard. That is, to listen to it from beginning to end, then to understand and comprehend its literal and Shar`i implication and to memorise it as accurately as possible. And then further to practice on its message and not depend on one's memory and to convey its message to others, so that one will be deemed to have absolved oneself of the responsibility (of conveying the message). The succession of the narration must be such that it has been recorded in some Kitaab, in the way the Muhadditheen record narration with a full chain. This is hat is known as *zabt.*

'Adalat

All Sahaabah ﷺ are just *('aadil).* There is some difference in their rankings, however. Like the Khulafaa-e-Raashideen, the senior Sahaabah ﷺ, the *Ashara Mubash-shara,* those Sahaabah ﷺ who

met Nabi ﷺ more than once, those who were close to Nabi ﷺ, etc. The Bedouin Sahaabah ﷺ who lived in the villages were not as intelligent and perceptive as the senior and close Sahaabah ﷺ of Nabi ﷺ. Although no non-Sahaabi can ever reach the status of even these low-ranking Sahaabah ﷺ, they are lesser in rank than the senior Sahaabah ﷺ.

CHAPTER TWO:

SECOND TYPE: The Discussion on *Inqitaa'*

When the link in the chain of narrators breaks, then this is know as *Inqitaa'*. According to the Principles of Fiqh, **there are two types of *Inqitaa'*:**

Inqitaa'-e-Zaahiri

The chain of narrators do not remain intact in the transmission of the Hadith from Nabi ﷺ until it reaches us, or the authors of the reputable Kitaabs of Hadith. This chain breaks in between somewhere. If there is no mention of any narrator in the chain, then this is regarded as a break in the chain. Such narrations are termed *Munqati'*, i.e. a narrator does not mention the person from whom he is narrating. He mentions قال رسول الله ﷺ but he omits the name of the person, he is narrating from. Such a narration is called *Mursal*.

Mursal is divided into four types;

1. In reality the narration is established from Nabi ﷺ. One Sahaabi (radhiallahu anhu) had heard it and he reported it to others in

turn. Now when these Sahaabah ﷺ report this Hadith, they omit the name of the first Sahaabi ﷺ. In this way the name of one narrator is omitted. Nevertheless, since the one who is omitted and persons who are omitting his name are all Sahaabah ﷺ, hence this type of *Mursal* is accepted. This is owing to the fact that all Sahaabah ﷺ are *'Aadil.*

2. If a Tabiee does not mention the name of the Sahaabi from whom he is reporting or a Tabe Tabiee omits the name of the Tabiee from whom he is reporting, then too such a narration is acceptable.

3. If any person after a Tabe Tabiee is omitted from the chain, then according to some, such narrations are acceptable, whilst others differ.

4. If some narrators had reported a Hadith in succession and some had omitted a narration, then such a narration is acceptable.

Two types of *Inqitaa' Baatini*

1. If any narrator of a narration is such that he lacks any one of the four conditions of a narrator, then such a narration is not accepted. If, for example he is a faasiq, or a kaafir or deficient in intelligence or a child.

2. If any narration is contrary to the Qur`aan Majeed, or to a *mutawaatir* or *Mash-hoor* narration, or it conflicts a famous incident during the era of the Sahaabah ﷺ, or it is such that the Sahaabah ﷺ did not deem it worthy of consideration in a ruling, then such narrations are totally rejected.

CHAPTER THREE

THIRD TYPE OF SUNNAT: The discussion regarding the proof of a *Khabar waahid*

Khabar refers to a Hadith also. *Kahabar waahid* can be used **a proof in the Shariah in four instances;**

1. In matters regarding the rights of Allaah ﷻ *(huqooqullaah).* For example, in Ibaadaat of Salaat, fasting, etc. If it is cloudy or overcast, then the sighting (of the moon) of even one person will render fasting Fardh.
2. In matters pertaining to the rights of people. Where the rights of someone else needs to be established. For example, in establishing debt and in other disputes. However, in such cases a court and witnesses are also necessary. Without this, no right can be established.
3. In matters pertaining to the rights of people where the rights of wealth are not established. For example, to make someone a representative in a transaction, where a court is not a requirement.
4. In matters pertaining to the right of people where one has a right over others in a certain regard. For example, someone intended making another his representative in purchasing something. Later he dismissed him. Now since the representative bought something after his dismissal, the cost of this is on him (the representative). A more detailed discussion on this fourth type comes in the detailed Usool Kitaabs. Whatever has been mentioned here is regarding *Usool-e-Fiqh* and its definitions.

THIRD PART: THIRD BASIS OF SHARIAH – *IJMA'*

The dictionary definition of *Ijma'* is a general consensus.

In the Shariah, *Ijma'* refers to a consensus of the Mujtahiddeen, *'Aadileen* and *Saaliheen* through every era of the Ummat of Nabi ﷺ, on any belief, speech or action.

Ijma' consists of three types;

Ijma'-e-Qowli

If this consensus came down by way of speech, where the Mujtahiddeen had verbally specified the issue. That is, they said that they are unanimous on so and so issue or if each one of them had individually acceded to the fact that he is in agreement or that his *math-hab* conforms to it.

Ijma'-e-Fa'li

When all of them had implemented and practiced on any particular action and they had all unanimously accepted that act, then this is called *Ijma'-e-Fe'li.* For example, partnership (in business) etc. These two types of *Ijma'* are the most superior.

Ijma'-e-Sukooti

If any Mujtahid had said or implemented any ruling/action during his time, and in the subsequent eras, notwithstanding other Mujtahiddeen knowing of this, and having time and opportunity to comment or refute, had maintained silence. Even this is classified as *Ijma'. Ijma'-e-Sukooti* is (silent) consent. According to the Hanafis it is taken into

consideration.

Note #1: If any one ruling during a certain era remained with a difference of opinion and that era terminated. If in the following era, the Ulama of that time, are unanimous on the ruling of any one of the Mujtahiddeen, then too, *Ijma`* will be effected.

Note #2: For *Ijma`* to be effectual, there has to be some Shar`i basis (in that particular ruling). Like there has to be consensus and unanimity on a ruling extracted from a *kha bar waahid* or *Qiyaas.* An *Ijma`* on someone's *Ilhaam* or esoteric information is invalid. If there has to be consensus by the Ulama of any era on such a thing, then this will not be regarded as a Shar`i *Ijma`.*

Note #3: The verification of *Ijma`* has to also be established through *Ijma`.* That is, since the time there was *Ijma`* on any ruling, this has to be transmitted through the ages by continual transmission *(tawaatur)* until it reaches us, and there has be *Ijma`* of the Ulama in all these eras as well. In this case the *Ijma`* will attain the level of a *Khabar mutawaatir.* **The ruling of such *Ijma`* is absolute and practice upon it is Fardh.**

If *Ijma`* is transmitted in the fashion of *Khabar waahid,* then its ruling will be of the level of *zanni* (not absolute). Practice on this will however be Waajib.

FOURTH PART: THE FOURTH BASIS OF THE SHARIAH

The Discussion on *Qiyaas*

The fourth proof in the Shariah and means of establishing rulings is

Qiyaas. First it has to be established if any ruling is found in the Kitaabullaah, or in the Sunnat of Rasulullaah ﷺ, or by *Ijma`* of if it is clarified by *Qiyaas.* The dictionary definition of *Qiyaas* is to measure up or level something. For example it will be said in Arabic: قس النعل بالنعل *"Measure/size up one sandal with the other and make them the same."*

<u>The definition of *Qiyaas* according to the Shariah</u>

This is where two things are compared, where the one is already established with a valid Shar`i basis and then to find common qualities and traits between the two which results in establishing/proving the second thing. This is *Qiyaas.* If any ruling is established through Kitaabullaah or Sunnat and the basis and reason *(illat)* for this ruling is ascertained, and then another issue presents itself before us, for which there is no clear Shar`i ruling to be found in the former sources, but it becomes apparent that the very same reason which rendered the proven thing its ruling is also to be found in this (new) issue, then we decree a similar ruling for this (new) issue, **based on this common *illat.*** This in essence is *Qiyaas.*

For example it is stated in the Hadith Shareef that it is impermissible to exchange wheat for wheat in unequal quantities. Now if we take rice and we are unaware of the ruling regarding it, so we reflect on the Hadith. Upon reflection we realise that since it is impermissible to trade in wheat for wheat if the quantities differ, then we see that this refers to two things which are of the same type (wheat for wheat) and it (wheat) is such a commodity that is sold by weight, hence we concur

that the same ruling be applied also to the exchange of rice for rice, because rice is also something which is sold by weight. It will therefore be impermissible to also trade in rice for rice, if the quantities differ. If rice is traded for rice, then the quantities have to be equal. If any one side is more or less, then it will be *riba.*

From this example, we realise that for Shar`i *Qiyaas,* four things are essential:

1. Firstly, the thing which is used as a basis for comparison and whose ruling is already established from Qur`aan Majeed or Sunnat, that thing is called *Maqees Alaih* (wheat in this example).

2. The second thing, whose ruling we are unaware of, is called the *Farr'a* (فرع). In this example it would be the rice.

3. The ruling which was established for the first thing is called the *hukm.* Credit in equal qualities is not permissible.

4. That particular quality which was the basis for the ruling in the first thing, is called the *wasf* or *illat.* In the example this would be the type and quantity.

1	Original *maqees 'alayh*	In the above-mentioned example, it will be	wheat
2	*Maqees* or *farr'a*	''	Rice
3	*hukm*	''	Equality no credit
4	Quality or *illat*	''	Same type and weight

<u>PART ONE: The condition for a Shar`i *Qiyaas*</u>

There are four conditions for a Shar`i *Qiyaas;*

1. The ruling which has been established for the *asl* (original), is not specifically applicable only to it, otherwise this ruling would not have been able to be applicable to the *farr'a.* If any ruling is specific to any particular issue, then this will be ascertained from *nass.* For example, Nabi ﷺ gave consent for the single witness of Hadhrat Khuzaima (radhiallahu anhu) to be sufficient in a transaction, owing to his strong Imaan. There were other Sahaabah (radhiallahu anhum), like the Khulafaa-e-Raashideen (radhiallahu anhum) and others who also had strong Imaan, perhaps even more so than Hadhrat Khuzaima (radhiallahu anhu), but this *illat* was never applied to them that they could be testify singularly in a transaction. This ruling and *illat* of strong Imaan was special for and only applicable to Hadhrat Khuzaima (radhiallahu anhu). It being specially applicable to him only is borne out by the following Hadith of Rasulullaah ﷺ, *"That person for whom Khuzaima testifies, it is sufficient for him".*

2. The ruling which is established for the *asl* must not be something unintelligible. For example, the ruling that laughing out loudly in Salaat breaks the wudhu. The act of laughing out loudly breaking the wudhu is something which is incomprehensible. Wudhu is a form of cleanliness and only acts of impurity will break wudhu. Laughing is not an unclean act. Therefore an incomprehensible ruling in the *asl* cannot be used in deciding another issue. For example, if we say that *Nauthubillaah,* someone becomes *murtadd* during Salaat and

a little while later renews his Imaan, then his wudhu will not break, because we do not know why laughing breaks wudhu. Even though becoming *murtadd* is by far worse than laughing out loud, nevertheless, we cannot use its ruling for *irtidaad.*

3. *Qiyaas* is used to establish a Shar`i ruling. Therefore, the ruling which is applicable to the *asl,* has to applied to another issue which is a Shar`i issue. Whatever the original ruling is, it has to be applied to the tee to the other issue. The *farr`a* is the similitude and equal of the original; it is not something lesser. There is no *nass* for the *farr`a,* and since there is for the original ruling, there is no need for bringing a ruling from elsewhere.

Grape liquor is called *khamar* in Arabic. It intoxicates. Now, to call all other intoxicating liquors *khamar* would not be termed *Qiyaas,* because no Shar`i ruling is established thereby. In fact only a lexicographic assumption and similarity is made.

If a man says to his wife, *"You are (Haraam) to me like the back of my mother",* then this is called *zihaar* in the Shariah. The Shar`i ruling of *zihaar* is that cohabitation with the wife becomes Haraam. It only becomes halaal after he fulfils the *kaffaara.* This is the ruling for the *zihaar* of a Muslim. If a *zimmi* (a non-Muslim living in a Muslim country) says this to his wife, then it will not be termed a Shar`i *zihaar.* If it were to be termed a Shar`i *zihaar,* then it would have to be implemented exactly as prescribed, that after *zihaar* cohabitation is Haraam, and in order to make it Halaal, the husband will have to give *kaffaara,* which is a form of Ibaadat, and Ibaadat is

not for the kuffaar.

So *kaffara* will not be valid for a kaafir, hence this statement from a kaafir will not be termed *zihaar.* If it were to be *zihaar* then since *kaffaara* for a kaafir is invalid, then it would mean that the kaafirs wife will forever he Haraam for him, whereas this prohibition is only a temporary one. In this case the *zihaar* of a kaafir will not be the Shar`i *zihaar* and to make *Qiyaas* of it with a Shar`i *Qiyaas* is not proper.

If a fasting person forgetfully eats or drinks, then the ruling is that his fast does not break. If a person knowing that he is fasting gargles his mouth and water goes down his throat, then he is called a *Khaati,* and a fasting person who is forced and under duress to eat is called a *mukrih.* In these two cases the fast of a *khaati* and *mukrih* are broken. The excuse for the *naasi* was greater than that of the *khaati* and *mukrih.* The *naasi* was fed by Allaah ﷻ Ta'ala and who was there to prevent this? The *khaati* has willingly erred and the *mukrih* could have in some way or the other prevented the duress, wither by his own force or seeking help from someone else. In this case the *farr`a* is not similar to the *asl,* hence *Qiyaas* here is not valid.

The *kaffaara* for intentional murder is to free a Muslim slave, but this condition of the slave being Muslim is not conditional in the *kaffaara* of a vow or *zihaar.* It will be incorrect to make *Qiyaas* of these two on intentional murder, because there is *nass* on the *kaffaara* of these two and in this *nass* no mention is made of the slave being Muslim.

4. The fourth condition is that after *Qiyaas,* the *asl* must be left in its

original state. After extracting a ruling for the *farr'a,* no change must be made to the *asl,* otherwise *Qiyaas* will not be valid. The *nass* of the *asl* is as it was and no change can be made to it. For example if the *kaffaara* of *yameen* (vow) and *zihaar* were to be made as that of intentional murder, then it would mean that the actual *nass* has been altered and the condition of a Muslim slave has been added to it, whereas this is not so in the *nass.*

PART TWO: The Fundamentals of *Qiyaas*

We have ascertained that the fundamental of *Qiyaas* is *illat,* whereupon the ruling of the *asl* is based. It is now necessary to dilate upon the *illat.*

A condition for the *illat* is that it must be *saalih* and *mu'addal.* Being *saalih* means that it must be such an *illat* which conforms to the *illat* used and/or reported by Nabi ﷺ and the Sahaabah (radhiallahu anhum). And they must have also used it as a proof. It must also be in conformity to the ruling. For example, the father of a minor virgin girl has the right of *wilaayat* over her. He is able to make her Nikah without her consent, because she is a minor. Similarly is the case with a minor girl who is not a virgin and she was married previously – the father can make her Nikah a second time without her consent or happiness. The reason being that she too is a minor and the *illat* or being a minor is present in both. This quality of being a minor which we have used as an *illat* for *wilaayat* is such a quality, which conforms to and has a connection to the ruling (of *wilaayat* of the father). In being a minor there is a sort of helplessness and vulnerability. If any person is

helpless or vulnerable when executing a task, then such a person is liable for having someone over them as a *wali.* The need for appointing a *wali* for the helpless person arises. It has been reported from Nabi ﷺ that at times of necessity a change can be effected in a ruling. For example, the left-over water of an animal is impure. Now, a cat is also an animal and its left-over water should also be impure.

However, Nabi ﷺ said, *"Indeed they (cats) are among those who come and go amongst you."* Since cats are domesticated and they come and go into the homes as they please, it is difficult to control their movements, which will result in great difficulty if their left-over water were to be rendered impure, because one would have difficulty in knowing which water was touched by the cat and which not. Because of this difficulty the left-over water of cats is not impure. In the same way, because of this difficulty, we say that the father also has *wilaayat* over his non-virgin daughter. From this we see that the *illat* is *saalih* and it conforms to the ruling.

The meaning of the *illat* being *mu'addal* is that this *illat* did at some stage in *nass* or *Ijma'* have an effect. For example, being a minor which we had taken as an *illat* for the *wilaayat* of the father over his non-virgin daughter, is also the *illat* which has been accepted by *Ijma'* for the father to be the *wali* over the wealth of his minor virgin and non-virgin daughter. That is, the father has the right to spend from the wealth of his minor daughters. **It is obvious that life is more precious than wealth, hence if the father can control his minor daughter's wealth,** he also attains *wilaayat* over their marital affairs. The welfare of

their lives have preference over the welfare of their wealth. If a minor is given money, then she will (probably) waste it. Similarly, if she is gives herself in marriage to someone who is not suitable, then her entire life will be in misery.

When the *illat* complies with these fundamentals, then such an *illat* can become a basis to establish a ruling. Now you should try to understand *Qiyaas* with an example which has already passed previously, where Nabi ﷺ said, *"Wheat (can be traded) for wheat, barley for barley, dates for dates, salt for salt, gold for gold and silver for silver in equal quantities, hand to hand (cash). Any excess will be riba."* If any of these are exchanged even for equal quantities but on credit, then too it will be regarded as *riba,* because one of the two persons will be benefiting. We have reflected on this issue as to how an excess will be *riba,* why equality is necessary and why credit is not permissible. We realise that Nabi ﷺ had placed two of the same type of goods together and that they are weighable items. **We deduce that the *illat* of the ruling is – same type of commodities and that they are weighable.** Now, whenever there is an exchange (of goods) and this *illat* is present, then this ruling will be applied. This is the reality of *Qiyaas.* And Allaah ﷻ knows best.

PART THREE: *ISTIHSAAN*

One superior type of *Qiyaas* is *Istihsaan.* In a ruling of *nass* there is an apparent and discernable *illat.* This in turn, necessitates one ruling. However, after deeper investigation and reflection, we unearth a hidden *illat,* and this hidden *illat* is even more stronger than the

apparent *illat.* **Now, to give the ruling in conformity with this hidden *illat* is what is called *istihsaan.*** This has many different types, whose discussion you will encounter in another juncture, Insha-Allaah.

Translation Edited by Mufti Afz[illegible]en Elias
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